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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 9, Original

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF LOUISIANA, ET AL.,
Defendant.

REPORT OF WALTER P. ARMSTRONG, JR. SPECIAL MASTER

July 31, 1974

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PRELIMINARY

In *United States* v. *Louisiana,* (1960) 363 U.S. 1 (hereinafter cited as the "first Louisiana opinion"), the Court held that by the Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 U.S.C.A. §§1301-1315, the United States has quitclaimed to the State of Louisiana the lands underlying the Gulf of Mexico within three geographical miles of its coastline, which under said Act is defined as "the line of ordinary low-water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." In *United States* v. *State of Louisiana, et al.,* (1969) 394 U.S. 11 (hereinafter cited as the "second Louisiana opinion"), the Court then laid down certain rules and precepts for the

determination of the location of said boundary. In many instances these were self-executing, and required no further investigation or findings; but in others, the determination of the boundary under the rules laid down by the Court depends upon the determination of certain disputed facts. In *United States* v. *California*, (1965) 381 U.S. 139 (hereinafter cited as the "California case"), the Court had adopted for purposes of defining "inland waters" within the meaning of the Submerged Lands Act the definition contained in the International Convention on the Territorial Sea and the Contiguous Zone ratified by the United States in 1961 (15 U.S.T. (pt. 2) 1606, T.I.A.S. No. 5639, 1964). In the second *Louisiana* opinion, the Court held that the adoption of that definition was not simply for the purpose of delineating the California coast but for the general purpose of defining the term as used in the Submerged Lands Act, saying:

> "Congress left to this Court the task of defining a term used in the Act, not of drawing state boundaries by whatever method might seem appropriate in a particular case. It would be an extraordinary principle of construction that would authorize or permit a court to give the same statute wholly different meanings in different cases, and it would require a stronger showing of congressional intent than has been made in this case to justify the assumption of such unconfined power." (394 U.S. 11, 34)

The Court continued:

> "Moreover, adoption of a new definition of inland waters in this case would create uncertainty and encourage controversy over the coastlines of other States, unsure as to which, if either, of the two definitions would be applied to them." (394 U.S. 11, 34-35)

Accordingly, the Court held that that part of Louisiana's coastline which, under the Submerged Lands Act, consists of "the line marking the seaward limit of inland waters," should be drawn in accordance with the definitions of the Convention on the Territorial Sea and the Contiguous Zone.

However, as has been noted, the actual determination of this line under the provisions of that Convention in some cases depends upon factual determinations of disputed facts. As the Court said:

> "Many issues divide the parties concerning the application of the provisions of the Convention on the Territorial Sea and the Contiguous Zone to the Louisiana coast. Some of these issues, which involve simply interpretation of the Convention, we have been able to decide on the basis of the materials now before us. Others, however, are primarily factual questions involving the construction and application of the Convention's provisions with respect to particularized geographical configurations. Several of these factual disputes cannot be properly resolved without evidentiary hearings, and as to others we think it would be wise at all events in this technical and unfamiliar area to have the benefit, preliminarily, of the judgment of a detached referee. Accordingly, we have decided to refer to a Special Master the task of resolving in the first instance several of the particularized disputes over the precise boundary between the submerged Gulf lands belonging to the United States and those belonging to Louisiana." (394 U.S. 11, 35-36)

Accordingly, by order entered May 19, 1969 (395 U.S. 901) the undersigned was appointed as Special Master in the cause "to make a preliminary determination consistent with the opinion of this Court."

Pursuant to this reference, pre-hearing conferences were held before the Special Master on September 29 and December 5, 1969 and on March 9, 1970, the results of which were embodied in a Pretrial Order entered in the cause on April 27, 1970. Thereafter evidentiary hearings were held before the Special Master in New Orleans, Louisiana on September 28 through October 2, October 5 through October 9, October 19 through October 23 and October 26 and 27, 1970; in Washington, D. C. on January 18 through 22 and January 25 through 29, 1971; and in Baton Rouge, Louisiana on April 26 through 30, 1971. The transcript of these hearings occupies 46 volumes containing a total of 6,444 pages. During the course of these hearings the State of Louisiana offered 356 separate exhibits and the United States offered 419, all of which were received subject to appropriate objections, ruling upon which, like that upon objections to the testimony offered, were reserved.

During the course of the proceedings, two additional orders were entered, on December 2, 1970 and March 25, 1971 respectively. Thereafter, on October 20, 1971 and February 6, 1972 Post Hearing Orders were entered in the cause by the Special Master, and on February 6, 1972 inspection was permitted in New Orleans, Louisiana of certain documents requested of the United States by the State of Louisiana in connection with which a privilege was claimed by the United States, pursuant to certain rules and regulations laid down by the Special Master, his ruling upon the conditions under which this material could be used by the State of Louisiana being embodied in an additional order dated May 15, 1972. Thereafter the matter was thoroughly briefed by counsel of record for both parties, and upon October 15, 1973 a Post Hearing Conference was held at which counsel for the respective parties presented their views orally in lieu of argument. At that time

the Special Master advised counsel of his tentative findings in this cause, which were there discussed orally and again at a second such conference on October 29, 1973, and thereafter were again briefed in the light of such findings, which, as since modified in the light of said discussions and briefings, form the basis for the findings embodied in this report in their final form. The results of these conferences were embodied in an additional post-hearing order entered July 8, 1974.

Joint pre-hearing statements were agreed to by the parties under dates of December 1969 and January 21, 1971. These are reproduced as Appendix A-1 and A-2 hereto. The first of these sets forth in detail the specific issues to be decided by the Special Master as agreed to by the parties. The second establishes an agreed coastline from the Mississippi boundary to Breton Island, thus removing this area from controversy.

On December 20, 1971 and October 16, 1972 the Supreme Court entered Supplemental Decrees defining the seaward-most boundary of the Lousiana claim and the landward-most boundary of the United States claim, thus confining the controversy and the jurisdiction of the Special Master to the areas between the two lines.

While the specific issues set forth in the Stipulation referred to above are numerous, they are related in such a way as to render them capable of being dealt with under three major headings.

A. STRAIGHT BASELINES

Article 4 of the Geneva Convention provides that under appropriate circumstances "the method of straight baselines joining appropriate points may be employed in

drawing the baseline from which the breadth of the territorial sea is measured." Those circumstances are set forth in detail in the article, and there seems to be little doubt that they exist in the case of the Louisiana coastline. Therefore, had the United States seen fit to adopt such a system of straight baselines, it would have been entirely appropriate in the instant case. As Mr. Justice Black points out in his dissent to the second *Louisiana* opinion (394 U.S. 11, 78), had the United States seen fit to adopt such a system, many, if not all, of the difficulties inherent in this case would have been obviated. However, the establishment of such a system of straight baselines can only be by affirmative action on the part of the United States, as Article 4, Subsection 6 of the Geneva Convention requires that "the coastal State must clearly indicate straight baselines on charts, to which due publicity must be given." Such affirmative action has never been taken by the United States.

This is supported by the United States' interpretation of the *Anglo-Norwegian Fisheries Case*, I.C.J. Reports (1951), in which such a system of straight baselines had been affirmatively established by positive action on the part of the coastal nation involved. There is nothing contrary in the case of *The Anna*, (1805) 5 C. Rob. 373, in which it was merely held that islands adjacent to the mainland may form a part of the mainland. In the *California* case, neither party suggested to the Court that the United States had adopted a system of straight baselines, and in fact both specifically disclaimed any reliance upon it. The Special Master in that case prepared his report without reference to any such possibility. And in the second *Louisiana* opinion the Court specifically held:

> "While we agree that the straight baseline method was designed for precisely such coasts as the Mississippi River Delta area, we adhere to the position that the

> selection of this optional method of establishing boundaries should be left to the branches of Government responsible for the formulation and implementation of foreign policy. It would be inappropriate for this Court to review or overturn the considered decision of the United States, albeit partially motivated by a domestic concern, not to extend its borders to the furthest extent consonant with international law." (394 U.S. 11, 72-73)

However, in a footnote (97) to that same opinion, the Supreme Court said:

> "We do not intend to preclude Louisiana from arguing before the Special Master that, until this stage of the lawsuit, the United States had actually drawn its international boundaries in accordance with the principles and methods embodied in Article 4 of the Convention on the Territorial Sea and the Contiguous Zone." (394 U.S. 11, 74)

It therefore becomes necessary for the Special Master under this direction to consider each of the contentions of the State of Louisiana as to various actions taken by the United States prior to the initiation of this litigation which Louisiana contends amounts to the adoption of a system of straight baselines.

1. *The Inland Water Line.* This is the line demarking the waters within which the rules of navigation codified at 33 U.S.C. §§ 152-232 promulgated pursuant to Act of February 19, 1895, 28 Stat. 672, as governing the navigation of all vessels "on the harbors, rivers and inland waters of the United States", are to apply. The history and legislative background of these rules is given fully in the second *Louisiana* opinion, where the Court says:

"By the long-standing, continuous, and unopposed exercise of jurisdiction to regulate navigation on waters within the 'Inland Water Line,' the United States is said to have established them as its inland waters under traditional principles of international law. Alternatively, Louisiana suggests that, even assuming the exclusivity of the Convention on the Territorial Sea and the Contiguous Zone, the 'Inland Water Line,' by virtue of this assertion of sovereignty, has created 'historic bays' within the exception of Article 7 of the Convention. We have concluded, however, that nothing in either the enactment of the 1895 Act or its administration indicates that the United States has ever treated that line as a territorial boundary." (394 U.S. 11, 21-22)

This would appear to conclude the matter insofar as the Special Master is concerned, as only those issues not decided by the Court itself are referred to him for consideration. The State of Louisiana apparently continues to argue, however, that because the Act authorizing the Inland Water Line refers to "inland waters of the United States," the waters enclosed within that line must necessarily be inland waters within the meaning of the Submerged Lands Act. This argument has already been passed upon by the Supreme Court in the second *Louisiana* opinion:

> "Congress, it is said, must have contemplated that a technical term such as 'inland waters' should have the same meaning in different statutes. The phrase appears, however, in quite different contexts in the two pieces of legislation. While the Submerged Lands Act established boundaries between the lands of the States and the Nation, Congress' only concern in the 1895 Act was with the problem of navigation in waters close to this Nation's shores. There is no evidence in the legislative history that it was the purpose of Congress in 1953 to tie the meaning of the phrase 'inland waters' to the 1895 statute." (394 U.S. 11, 19)

Here again, the argument advanced by the State of Louisiana appears to have been fully answered by the Supreme Court in its opinion. However, lest there be any doubt it is now specifically held that the Inland Water Line does not constitute a system of straight baselines within the meaning of Article 4 of the Geneva Convention and therefore does not delineate the outer boundaries of inland waters of the United States or of the State of Louisiana.

2. *The Chapman Line.* This line was originally drawn in 1950 by the United States as a proposed method of implementing the Court's decree in *United States* v. *Louisiana*, 339 U.S. 699, 340 U.S. 899. When, in 1956, the Chapman Line was adopted in the Interim Agreement of that year as a tentative basis for allocating revenues from the disputed areas pending the outcome of the litigation, it was stipulated that the United States would not be bound by the line. As the Supreme Court notes in Note 97 to the second Louisiana opinion:

> "No inference or conclusion of fact or law from the said use of the so-called 'Chapman-Line' or any other boundary of said zones is to be drawn to the benefit or prejudice of any party hereto . . . ." (394 U.S. 11, 73-74)

Clearly then the Chapman Line was not drawn in accordance with the principles and methods embodied in Article 4 of the Geneva Convention so as to give it force in international law. Furthermore, in the stipulation of January 21, 1971, it is stated as follows:

"Louisiana recognizes, however, the United States' position that these are not wholly inland waters, and agrees that Louisiana does not and will not base its arguments regarding the inland status of these or any other waters in this or any future litigation between it and the United States upon this stipulation, upon the action of the United States in fixing the Chapman Line in this area, or upon prior concessions regarding this area made by the United States for the purpose of this and the predecessor case, *United States* v. *Louisiana*, 339 U.S. 699."

In view of the foregoing, it clearly appears that the Chapman Line does not meet the requirements of Article 4 of the Geneva Convention for a system of straight baselines, and it is now specifically so held.

3. *The Louisiana* v. *Mississippi Chart.* Louisiana also insists that the chart which appears as an illustration to the opinion of the Supreme Court in *Louisiana* v. *Mississippi*, 202 U.S. 1 (1906), constitutes a system of straight baselines. There are, however, many arguments which mitigate against this. In the first place, there are three different versions of this chart attached to the opinion, none of which purports to have any high degree of accuracy. Secondly, the purpose of the diagram was to illustrate the eastern boundary of Louisiana, and not to establish the maritime boundary of the state. Thirdly, it was utilized by the Supreme Court for purposes of its opinion on that issue, and not by any executive or other branch of the United States government having to do with foreign affairs. And fourthly, the line on the diagram is obviously not a straight baseline of any kind, but an attempt to follow the coastline at a distance of one marine league. In fact, the court quite specifically says:

"Questions as to the breadth of the maritime belt or the extent of the sway of the riparian States require no special consideration here. The facts render such discussion unnecessary." (202 U.S. 1, 52)

4. *Census Boundaries.* The object of a national census is obviously to determine certain statistical information for the internal use of the nation involved, and not to establish international boundaries; however, the State of Louisiana insists that the line established in 1937 by the Department of Commerce for purposes of the 1940 census (*Proudfoot, Measurement of Geographic Area* 33, U.S. Dept. of Commerce [1946]) constituted the adoption of a straight baseline system. This determination was made, however, many years before the adoption of the Geneva Convention, for purposes totally unconnected with it; and the results were certainly never clearly indicated on charts which were given due publicity to the nations of the world. It therefore follows that whatever their validity may have been for internal purposes, the census line established in 1937 did not constitute a system of straight baselines within the meaning of the Geneva Convention for purposes of establishing a boundary to the inland waters of the United States and the State of Louisiana.

5. *Bird Sanctuaries.* The State of Louisiana insists that the executive orders of President Theodore Roosevelt establishing bird sanctuaries at Tern Islands and Shell Keys respectively established systems of straight baselines around those areas which are now entitled to be recognized under the Geneva Convention. Even a cursory glance at these orders and the diagrams attached to them, will, however, serve to dissipate this impression. In neither case is there a system of straight lines drawn from point to point, but merely a roughly drawn circular line enclosing an area in which there is both land and water, the line having reference to no particular points

of land whatsoever. The purpose is obviously not to establish a boundary between inland and territorial waters, but to establish a limit within which bird life will be protected to the extent established by the order itself.

These orders are specific in their wording as to what is included within their jurisdiction. The first of them refers to "all small islets, commonly called mudlumps in or near the mouths of the Mississippi River, Louisiana, located within the area segregated and shown upon the diagram hereto attached and made a part of this order."

The second refers to "these islets, located within the area segregated and shown upon the diagram hereto attached and made a part of this order." In both cases, clearly the intent was to set aside land areas within the circular line drawn upon the diagram as bird sanctuaries, and not to set aside the entire area within the line itself.

The State of Louisiana, however, makes much of the fact that as the birds to be protected under these executive orders are water fowl, this cannot be done adequately unless the waters adjacent to the land areas included in the reservations are controlled as well as those land areas themselves, citing *Alaska Pacific Fisheries* v. *United States*, 248 U.S. 78 (1918). The circumstances in that case, however, appear to be quite different; nor does the holding compel the conclusion that in the case of the Tern Island and Shell Keys reservations it was the intent of the executive order to include the intervening waters. Certainly by designating the islands themselves as bird sanctuaries, the territorial waters surrounding those islands were included within the protection of the order, which it appears would be more than sufficient to give the water fowl the needed protection. It being unnecessary to extend the meaning of the executive orders further to accomplish their purpose, no such meaning or intent should be read

into them. It therefore follows that these two executive orders did not establish a system of straight baselines within the meaning of Article 4 of the Geneva Convention. Accordingly Issues 1(a), 11(d) and 12(e) must be answered in the negative.

B. HISTORIC BAYS

Subsection 6 of Article 7 of the Convention on the Territorial Sea and the Contiguous Zone provides that the provisions of the Convention in regard to juridical bays "shall not apply to so-called 'historic' bays." Throughout this litigation, the State of Louisiana has contended that certain bays along its coast line come within the definition of historic bays, and therefore qualify as bays within the meaning of the Convention even though they do not meet its test as juridical bays.

In the second *Louisiana* opinion, after discussing the concept of historic bays, the Court says:

> "But because the concept of historic waters is still relatively imprecise and its application to particular areas raises primarily factual questions, we leave to the Special Master—as we did in *United States* v. *California*—the task of determining in the first instance whether any of the waters off the Louisiana coast are historic bays." (394 U.S. 11, 75)

As the Court notes, the definition of historic waters under the Convention is imprecise. However, in its opinion the Court lays down certain guidelines for making this determination. For example, it says:

> "As we said in *United States* v. *California*, it is generally agreed that historic title can be claimed only when the 'coastal nation has traditionally asserted and

maintained dominion with the acquiescence of foreign nations'. 381 U.S., at 172, 14 L.Ed.2d at 317." (394 U.S. 11, 23)

To this statement is appended a note (Note 27) which reads as follows:

"A recent United Nations study recommended by the International Law Commission reached the following conclusions:

'There seems to be fairly general agreement that at least three factors have to be taken into consideration in determining whether a State has acquired a historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States. First, the State must exercise authority over the area in question in order to acquire a historic title to it. Secondly, such exercise of authority must have continued for a considerable time; indeed it must have developed into a usage. More controversial is the third factor, the position which the foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of an historic title; others think that absence of opposition by these States is sufficient.' Juridical Regime of Historic Waters, Including Historic Bays, [1962] 2 Y.B. Int'l L. Comm'n 1, 13, U.N. Doc. A/CN.4/143 (1962)." (394 U.S. 11, 23-24)

It has already been noted in connection with the Inland Water Line that the reasonable regulation of navigation is not alone a sufficient exercise of dominion to constitute a claim to historic inland waters. At most, such control

of navigation, which is recognized by Article 17 of the Convention on the Territorial Sea and the Contiguous Zone to be proper within territorial waters, can form an historic basis for a claim to such waters. And as the Supreme Court held in the first *Louisiana* opinion that the State of Louisiana has no claim to any territorial sea and no rights therein other than those given it by the Submerged Lands Act, such activities can give rise to no claim on its part of any nature whatsoever.

The State of Louisiana, however, insists that both before and after the Geneva Convention, it has exercised over certain, if not all, of the disputed areas sovereignty of a type consistent only with inland waters, and that there has never been any protest either by any foreign power or by the United States as to the exercise of this sovereignty. This consists of the granting by the State of Louisiana of certain oyster and mineral leases; the regulation by it of fishing in the waters in question, including the exclusion of unlicensed vessels and in at least one instance the arrest of foreign unlicensed fishermen in those waters; the enforcement of pollution control regulations in the area; and the protection of wildlife in the area by both the State of Louisiana and the United States. The factual evidence presented in support of these allegations, which is not disputed by the United States and therefore for purposes of this report must be taken as true, is detailed in Appendix B. The question then arises whether these acts amount to an exercise of sovereignty sufficient to establish the areas in question as historic inland waters.

The State of Louisiana puts particular emphasis upon the failure of the United States to object to the various activities on its part enumerated above, calling attention to the Court's statement that its claim of historic waters

is to be treated as if it were being made by the national sovereign and opposed by another nation. However, whatever its position may have been theretofore, it is obvious that with the filing of the suit which resulted in the first *Louisiana* opinion the United States did not acquiesce in such activities but vigorously opposed the claim of the State of Louisiana, and has done so continuously since.

The State of Louisiana takes the position, however, that if its claim to historic title had already ripened because of past events prior to the time when it was first called into question in a domestic lawsuit, it would be an impermissible contraction of territory to permit the United States to defeat that claim by the filing of that suit. This is in accord with the holding of the second *Louisiana* opinion (see 394 U.S. 11, 73, Note 97, and 394 U.S. 11, 77, Note 104).

It is therefore necessary to determine whether the State of Louisiana at any time exercised such sovereignty over the areas in question as to give it the right to claim those areas as internal waters. Concededly prior to the first Louisiana opinion it was claiming those areas as part of its territorial sea, but in that decision that claim was held invalid.

The United States has disclaimed any intention on its part of seeking to establish any inland waters along the coast of the State of Louisiana on historic principles. In fact, the very filing of the present suit and its vigorous prosecution itself constitutes such a disclaimer. In a letter dated April 8, 1969 from Leonard C. Meeker, Legal Adviser, Department of State, to Erwin N. Griswold, Solicitor General, Department of Justice (U.S. Exhibit 108) it is stated:

> "We are not aware of any foreign waters which have been recognized as historic by the United States."

In a later letter dated April 14, 1970 from John N. Mitchell, Attorney General of the United States, to William P. Rogers, Secretary of State of the United States (U.S. Exhibit 114) it is further stated:

> "[T]he Department is unaware of any evidence regarding a claim by the United States Government of historic bays in any other area which would not now qualify as a legal bay under Article 7, paragraphs 1-5, of the Convention on the Territorial Sea and the Contiguous Zone."

In April 1971, the United States published a set of 155 maps delimiting the three mile territorial sea, the nine mile contiguous zone and certain internal waters of the United States, including the boundaries for the entire coast of Louisiana (U.S. Exhibit 416D). These maps are available for sale to the general public and have been distributed to foreign governments in response to requests to the United States Department of State for documents delimiting the boundaries of the United States. As shown thereon, those boundaries are entirely consistent with the position taken by the United States in this litigation, and do not include any historic bays along the coast of Louisiana which would not otherwise qualify as juridical bays.

The determination of the national boundaries is ordinarily a political and not a judicial function; *Jones* v. *United States*, 137 U.S. 202 (1890); *Vermilya-Brown Co.* v. *Connell*, 335 U.S. 377 (1948). This does not, however, preclude the courts from inquiring into the actual position taken by the sovereign in regard to specific waters, as opposed to its declared position. In the *California* case, the Court held that the legislative history of the Submerged Lands Act reveals that Congress meant to leave the definition of inland waters to the Courts and this holding was adopted insofar as the present litigation is concerned in

the second *Louisiana* opinion. However, it seems clear that the function of the Court is merely to interpret the executive intent and not independently to fix its own boundaries. In the *California* case, the Court also made the following holding:

> "The United States disclaims that any of the disputed areas are historic inland waters. We are reluctant to hold that such a disclaimer would be decisive in all circumstances, for a case might arise in which the historic evidence was clear beyond doubt. But in the case before us, with its questionable evidence of continuous and exclusive assertions of dominion over the disputed waters, we think the disclaimer decisive." (381 U.S. 139, 175)

In the second *Louisiana* opinion, the Court adopted the quoted language from the *California* case, and added:

> "Thus, the Court indicated its unwillingness to give the United States the same complete discretion to block a claim of historic inland waters as it possesses to decline to draw straight baselines.
>
> "While we do not now decide that Louisiana's evidence of historic waters is 'clear beyond doubt,' neither are we in a position to say that it is so 'questionable' that the United States' disclaimer is conclusive. We do decide, however, that the Special Master should consider state exercises of dominion as relevant to the existence of historic title." (394 U.S. 11, 77)

The question therefore appears to be whether the evidence supporting its claim to historic title offered by the State of Louisiana, which as has been stated is undisputed, is "clear beyond doubt" to the effect that such sovereignty was exercised over those waters as to establish them as historic inland waters, or whether that evidence is so "questionable" as to make the disclaimer of the United States conclusive. It has already been noted that under the second *Louisiana* opinion, the reasonable regulation of navigation is not alone a sufficient exercise of dominion to constitute a claim to historic inland waters, as it is an accepted, permissible regulation of the territorial sea itself.

All of the oyster leases relied upon by the State of Louisiana as a basis for its historic waters claim (Louisiana Exhibit 67) cover areas located within three miles of the shoreline, as is admitted by the State of Louisiana in its brief (Vol. II, page 92). The same is true of oyster leases in Caillou Bay (Louisiana Exhibits 75-76). It is apparently Louisiana's contention that the granting of these leases is consistent only with the establishment of the waters in the area as inland waters; but traditionally international law has recognized the right of the coastal state to control fishing, including oystering, within its territorial sea. At all times pertinent to these proceedings, the United States has claimed a territorial sea of at least three miles from the low-water mark in the areas where these leases were granted, and therefore they are entirely consistent with that claim even though made prior to the United States' claim to the continental shelf in 1945. They therefore are not evidence that the waters covering the leased areas are historic inland waters.

The same is true of the mineral leases granted in the East Bay and Caillou Bay areas (Louisiana Exhibits 86, 87, 90 and 91), issued prior to the United States' claim to the resources of the entire continental shelf in 1945. While certain of those leases purport to cover all areas subject to the jurisdiction of the State of Louisiana in East Bay and Caillou Bay (La. Exhibits 188 and 192), there is no evidence that any of these leases extended more than three miles from the low-water line of the shore,

and therefore they too are entirely consistent with the character of the waters covering the leased areas as territorial seas. All other leases offered by Louisiana in support of its position were issued after the United States claimed the resources of the entire continental shelf, and therefore could not put any nation on notice that an historic inland waters claim was being made.

As to the steps taken for the conservation of wildlife by both the United States and the State of Louisiana, this has already been dealt with in connection with the Tern Islands and Shell Keys reserves, where it was shown that only the islands themselves and their surrounding territorial seas were intended to be included in the proclamations.

The regulation of fishing within the territorial seas off the coast of the States to the extent that it does not conflict with federal law has long been recognized. See *Manchester* v. *Massachusetts*, 139 U.S. 240 (1891); *Skiriotes* v. *Florida*, 313 U.S. 69 (1941): *Toomer* v. *Witsell*, 334 U.S. 385 (1948).

Only one specific incident is cited by the State of Louisiana in which an arrest was made beyond the three mile zone. This was described in the testimony of Joseph Billiot, who stated that on one occasion in 1946 or 1947 three Mexicans were arrested in East Bay about 4.3 miles east of Southwest Pass. He could not remember the names of the vessels nor of the individuals, and no record of the arrest was introduced. Nor was any notice to or acquiescence on the part of the Mexican Government ever indicated.

It can hardly be said that this isolated incident meets the tests set forth earlier for establishing sovereignty sufficient to support a claim of historic waters. Certainly

no continuity is indicated, nor any acquiescence by a foreign government. In the *California* case there was cited a similar isolated criminal prosecution, *People* v. *Stralla*, 14 Calif. 2d 617, 96 P. 2d 941 (1939), although the defendant in that prosecution was apparently a United States citizen and not a foreigner. Describing this as the "only assertion of criminal jurisdiction of which we have been made aware" (381 U.S. 139, 174-175), the court held it insufficient to support a finding of historic waters.

Finally, the State of Louisiana asserts that it has exercised pollution control over a portion of the waters in controversy. However, the operative statute (Louisiana Act 68 of 1932) merely recites that it applies to "any waters in the State," and there is no evidence that Louisiana enforced any pollution regulations more than three miles from shore, except in connection with mineral operations after 1947. In the absence of conflicting federal regulations, a state has power to control pollution in its territorial waters if it may affect its inland waters or its shore (see *Askew* v. *American Waterways Operators, Inc.*, 411 U.S. 325 [1973]). Any acts of the State of Louisiana in connection with pollution control in waters off its shoreline were entirely consistent with the character of those waters as territorial sea, and therefore do not furnish a basis for establishing them as inland waters.

From the foregoing it is apparent that there is no basis for Louisiana's claim of historic inland waters extending beyond the limits of its coastline as determined by Section 2(c) of the Submerged Lands Act as interpreted by Subsections 1 through 5 of Article 7 of the Convention on the Territorial Sea and the Contiguous Zone, Subsection 6 thereof having no application to the facts in this case, even though undisputed. All of these facts are as consistent with a claim of territorial seas which Louisiana

was asserting to the extent of 27 miles from its shore line from 1938 to 1953 (Louisiana Act 55 of 1938) and nine miles from its shoreline from 1954 until the Court's decision of 1960 (Louisiana Act 33 of 1954) as they are with any claim of inland waters. Far from being clear beyond doubt, the evidence here adduced resembles that introduced in the California case which was held to be questionable, and therefore insufficient to support a finding of historic waters in the face of a contrary declaration by the United States. It is also similar to that presented before the Special Master in *United States* v. *Florida*, No. 52, Original, which he held not to be sufficient to meet the test (see pp. 42-46 of his report). The Special Master is constrained to make a similar finding in the instant case, and therefore Issues 1(d), 1(e), 11(c) and 12(d) as amended must be answered in the negative.

C. JURIDICAL BAYS

It remains, then, to determine the coastline of the State of Louisiana without reference to historic inland waters or to a system of straight baselines. In order to do this, it is necessary to determine the closing lines of a number of juridical bays which occur within that coastline. This, as was held in the *California* case and reaffirmed in the second *Louisiana* opinion, must be done in accordance with the Convention on the Territorial Sea and the Contiguous Zone. The applicable article is Article 7, Subsections 1 through 5 of which (Subsection 6 dealing with so-called "historic" bays having been heretofore held to have no application) read as follows:

"ARTICLE 7

"1. This Article relates only to bays the coasts of which belong to a single State.

"2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

"3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line adjoining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.

"4. If the distance between the low-water marks of the natural entrance points of the bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

"5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length."

In order to determine the southern coastline of Louisiana, it is necessary to apply these rules to the physical

contours of that coastline as they appear from the evidence in the record, either undisputed or as found by the Special Master. This requires some discussion of the applicable rules of evidence which are determinative of the facts to which these rules are to be applied.

The standard to be applied is established by the Convention itself. In Article 3 it provides:

> "Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State."

However, for purposes of this litigation the parties have stipulated that the applicable high and low-water lines shown on a set of 54 maps filed with the Special Master may be taken as correct, except where the right is specifically reserved by one of the parties to show otherwise. In most cases, therefore, it is unnecessary to go beyond these maps to establish the low-water line along the Louisiana coast. Where this reservation has been made, large-scale charts officially recognized by the coastal state are to be looked to in order to determine the location of the low-water line. There appears to be no dispute that a chart whose scale is 1 to 80,000 or larger is a large-scale chart within the meaning of the convention. However, it appears that even these large-scale charts are not conclusive in every instance. For example, in Note 48 to the second *Louisiana* opinion (394 U.S. 11, 40-41), the Court specifically leaves to the Special Master the determination as to the existence or non-existence of certain islands located within Atchafalaya Bay, and also an artificially created spoil bank at Pass Tante Phine, just to the north of West Bay. Some of these formations appear on large-scale charts officially recognized by the coastal state and yet the Court

indicates that their actual existence may be questioned. Therefore, the Court must be saying as a general principle, as insisted by the United States, that at least in certain instances the Special Master may look beyond the charts of the area involved to the actual facts. If the United States is to have the benefit of this rule, it would appear that the State of Louisiana should also have that benefit in areas where it has reserved a special exception to the accuracy of the set of 54 maps, and where the departure from the large-scale charts of the area, if it exists, is so substantial as to affect materially the location of the coastline.

Therefore, Issues 5(a), 6(a) and 8(a) must be answered by reference to Article 3 of the Convention specifying "large-scale charts officially recognized by the coastal State." Issues 5(b), 6(b) and 8(b) must be answered in the affirmative, except where the parties have stipulated to the contrary, and except where evidence of the physical facts shows the large-scale charts to be inaccurate in a material respect. And Issues 5(c), 6(c) and 8(c) must generally be answered in the negative, to the extent that evidence of physical facts contradicting the showing of large-scale charts officially recognized by the coastal State may be introduced under certain circumstances to show material inaccuracies in those charts, specific rulings thereon depending upon the actual facts as shown by the evidence.

It now remains to apply these rules of evidence to the facts in the record of this case, either undisputed or as found by the Special Master. In order to facilitate this, the Louisiana coastline will be considered in various segments proceeding from east to west, except for East Bay which, because of its unique problems, will be considered first.

1. East Bay

In the second *Louisiana* opinion, the Supreme Court specifically rejected the contention of the State of Louisiana that the entire area between Southwest Pass and South Pass constituted a single juridical bay, saying:

> "Another issue involving the semicircle test arises in East Bay in the Mississippi River Delta. Since East Bay does not meet the semicircle test on a closing line between its seawardmost headlands—the tip of the jetty at Southwest Pass and the southern end of South Pass—it does not qualify as a bay under Article 7 of the Convention on the Territorial Sea and the Contiguous Zone. There is a line which can be drawn within East Bay, however, so as to satisfy the semicircle test." (394 U.S. 11, 53-54)

The Court then goes on to reject Louisiana's argument that under these circumstances a "fall-back" line should be established as in the case of an over-large bay, saying:

> "The analogy is unsound. A bay whose mouth is wider than 24 miles is nevertheless a bay. But an indentation that does not meet the semicircle test is not a bay but open sea. If an indentation which satisfies the semicircle test is a true bay, therefore, it cannot be on the theory that the closing line carves out a portion of a larger bay. The enclosed indentation must by its own features qualify as a bay.
>
> The United States argues that the area within East Bay enclosed by Louisiana's proposed line does not constitute a bay because there is no 'well-marked indentation' with identifiable headlands which encloses 'landlocked' waters. Indeed, it is said, there is not the slightest curvature of the coast at either asserted entrance point. We do not now decide whether

> the designated portion of East Bay meets these criteria, but hold only that they must be met. We cannot accept Louisiana's argument that an indentation which satisfies the semicircle test ipso facto qualifies as a bay under the Convention." (394 U.S. 11, 54)

From this it would appear to follow that although the entire area does not itself qualify as a juridical bay (although it appears to be conceded that prior to 1918 it did so qualify) because of its failure to meet the semicircle test, if a smaller well-marked indentation with identifiable headlands enclosing landlocked waters which meets the semicircle test can be identified within the general area, it will qualify as a juridical bay.

The area between Southwest Pass and South Pass is not semicircular in general shape, but is more nearly V-shaped. The United States contends that within such a formation there can be no "well-marked indentation" enclosing "landlocked" waters. Although the waters of the Mississippi River flow into the area through many small channels, it is not a true estuary in that the major mouth of the river does not empty into it. The Geneva Convention defines a bay as follows:

> "A bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast." (Article 7[2])

The physical configuration of the East Bay area would seem to meet this test upon the basis of relationship between the width of its mouth to its depth upon a number of different closing lines, some of which have been suggested by the parties and some of which have not. That the general shape of the enclosed waters is not determinative is indicated by the fact that a number

of similar V-shaped indentations which appear on U. S. Exhibit 416-D are shown with closing lines indicating that they are accepted by the United States as true bays; i.e., Ursus Cove, Portage Bay, Abraham Bay, and Puget Bay. In addition, Egmont Bay, which is quite similar in its configuration, was held to be a juridical bay in *North Atlantic Coast Fisheries Arbitration* (1906), *Scott, The Hague Court Reports,* 141. And in the second *Louisiana* opinion, while specifically declining to decide whether East Bay meets all criteria for a juridical bay other than the semicircle test, the Court says:

> "[A]ll of the areas of the Mississippi River Delta which Louisiana claims to be historic inland waters are indentations sufficiently resembling bays that they would clearly qualify under Article 7(6) if historic title can be proved." (394 U.S. 11, 75, Note 100)

While it has already been held that historic title has not been proven in this case, from the above language it would seem to follow East Bay is such an indentation in the coast that if a closing line can be drawn within it between clearly identifiable headlands so that the enclosed waters meet the semicircle test, then the result is a juridical bay within the meaning of the Geneva Convention.

Louisiana insists that in determining such a closing line, the seawardmost line which meets the requirements must be accepted, and there is much to support this view. In the decree which was entered in the *California* case, the Court said:

> "In drawing a closing line across the entrance of any body of inland water having pronounced headlands, the line shall be drawn between the points where the place of mean lower low water meets the outer-

> most extension of the headlands. Where there is no pronounced headland, the line shall be drawn to the point where the line of mean lower low water on the shore is intersected by the bisector of the angle formed where a line projecting the general trend of the line of mean lower low water along the open coast meets a line projecting the general trend of the line of mean lower low water along the tributary waterway." (382 U.S. 448, 451)

It has already been noted that the Supreme Court has considered and rejected a closing line extending from the tip of the jetty at Southwest Pass to the southern end of South Pass, on the ground that a bay with such a closing line fails to meet the semicircle test, although it appears that it would qualify in all other respects. The next seawardmost line urged by the State of Louisiana is referred to by it as Closing Line A and extends between coordinates X = 2,697,850, Y = 117,200 on the east and X = 2,624,995 and Y = 108,700 on the west.

The State of Louisiana suggests that under the Thames Estuary case in determining the area of a bay tributary waters should be included up to the tideline, and intervening land forms should be treated as islands within the bay and also included within the area measured. If this were accepted, the entire lower portion of the State of Louisiana would have to be treated as one gigantic over-large bay, which could only be done as a practical matter if the United States had adopted a system of straight baselines, which as previously demonstrated it has not done. Furthermore, in stating that the bay formed by a closing line as described above did not meet the semicircle test, the Supreme Court has obviously rejected any such contention, thus indicating the adoption of a more

conservative method of measuring the area of the waters in East Bay.

In the alternative, Louisiana offers three other methods of measuring the area of bays having tributary waters. The most liberal of these, designated as method 3, follows all tributary waters up to their confluence with the Mississippi River and includes as part of the area all islands within the low-water mark, but excludes tributary waters if they are also tributary to any other water body. Method 2 is similar, except that it includes in the area measured only those land areas lying in the mouth of tributary waters and within the bay itself. Method 1 is the most conservative, and does not include tributary waters or islands formed by them, closing off their mouths at the point where they enter into the bay. This appears to be the method employed by the United States in making its area measurements.

In urging that this latter method should not be applied, Louisiana relies upon Article 13 of the Geneva Convention which provides as follows:

> "If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide of its banks."

On the principle of *expressio unius est exclusio alterius*, Louisiana argues that if a river does not flow directly into the sea but instead into a bay, a straight line should not be drawn across its mouth but instead the low water mark around the shore of the bay should be followed up into the tributary waters. This, however, raises the question as to how far such lines should be followed. As has already been demonstrated, as a practical matter, it cannot be followed to the tideline, as it would

be in a true estuary. On the other hand, to cut off the area of such tributary waters at the point where they connect with the main stream of the Mississippi River appears to be equally arbitrary with cutting them off at the point where they enter into the bay. Furthermore, Article 13 of the Convention does not deal with bays or the measurement of their area, but simply with determining the coastline at a point where a river flows directly into the open sea. In view of the fact that Article 7 by its terms is the only article dealing with bays, the coasts of which belong to a single state, it would appear that the principle cited above does not apply here. In view of this, the most conservative method of area measurement, known as method 1, which does not include tributary waters of rivers and streams flowing into a bay in its area measurement but draws a line from the nearest low-water points across the mouths of such tributary waters seems to be the proper method of making such measurements, as urged by the United States.

Under this method of measurement, closing line A as proposed by the State of Louisiana and described above, fails to meet the semicircle test by several thousand acres. As an alternative, Louisiana has proposed another closing line further inland, extending from coordinate X = 2,685,-325, Y = 133,800 on the east to X = 2,644,940, Y = 134,910 on the west. Upon the method of area measurement here adopted, this too fails to meet the semicircle test by some 820 acres. If this were not the case, either due to the adoption of a more liberal method of water area measurement or due to subsequent erosion in the area established by competent evidence in the record, either of these closing lines might be accepted, as the area which each of them encloses has all of the other characteristics of a true juridical bay.

The State of Louisiana next proposes two closing lines designated B^1 and C^1, both of which concededly satisfy the semicircle test. However, neither of these closing lines has a western terminus that qualifies as a pronounced headland helping to enclose landlocked waters. Closing Line B^1 suffers the additional objection that its eastern terminus is located at approximately the center of Cow Horn Island by applying the so-called "bisector of the angle" method, a technique entirely inappropriate in the physical situation, as there are pronounced headlands in the vicinity.

Using the same point as its western terminus, the State of Louisiana then proposes two further alternative closing lines designated as C and D respectively, one extending to a point on the northern and western tip of a low-water elevation known as Cow Horn Island not appearing upon the stipulated set of 54 maps, but appearing on nautical chart 1272 from 1941 to 1969, located at coordinates $X = 2{,}677{,}650$ and $Y = 138{,}050$, and the other extending to a point on a low-water elevation appearing upon the stipulated set of 54 maps at coordinates $X = 2{,}672{,}315$ and $Y = 141{,}745$. Both of these concededly meet the semicircle test by the most conservative of the methods described above.

Assuming the existence of Cow Horn Island, which if it indeed existed at any time was admittedly either connected to the mainland or so closely related to it that it may properly be deemed an extension of it, both of these also appear to meet the test of enclosing landlocked waters in a well-defined indentation with identifiable headlands. Although the United States argues that the headlands selected by Louisiana for these two closing lines do not meet the necessary requirements as they follow the general contour of the shore and therefore are more

closely related to the entrance to subsidiary pocket bays than to the enclosing of any part of East Bay itself, this argument is untenable as there are numerous examples in the record of similar headlands which have been accepted as the termini of closing lines for bays in other areas. Therefore, if the principle that the seawardmost closing line which meets all of the necessary requirements is to be accepted, then closing line C suggested by Louisiana is a proper closing line if Cow Horn Island actually existed at any time.

The test established by Article 3 of the Geneva Convention for determining the location of the low-water line along a coast is the marking as shown on large-scale charts officially recognized by the coastal State. Cow Horn Island appears upon such charts from at least as early as 1918 to the 24th edition of chart 1272, dated December 6, 1969, in which edition it was removed from the chart and does not appear in subsequent editions thereafter. There is, however, some evidence in the record that at least a remnant of Cow Horn Island continues to exist up until the present day, although it is not clear whether any part of it is above mean low-water. The United States insists that the absence of Cow Horn Island from present day charts requires a finding that Louisiana's proposed closing line C is improper, while Louisiana argues that its proposed closing line C is a proper closing line, either because it became fixed historically prior to the change in the charts on December 6, 1969, or because despite that change Cow Horn Island continues to exist today as a low-water elevation. The evidence in the record, however, is insufficient to support the latter contention, while, as to the former, it has been recognized by the Supreme Court and throughout these proceedings that any coastline which might be established as of a given time is necessarily ambulatory, as due to the natural processes

of erosion and avulsion the coastal area of the State of Louisiana is in a constant state of flux. Accordingly, from the evidence in the record in this case, it follows that Closing Line C as proposed by the State of Louisiana was the proper closing line up to December 6, 1969, and Closing Line D the proper closing line thereafter.

In opposition to this, Louisiana argues that since the preparation of the exhibits upon which the above area measurements are based, there have been substantial erosions in the Louisiana coastline, particularly in the Joseph's Bayou area, which have materially increased the extent of the open water, so that now its proposed Closing Line A meets the semicircle test even by the most conservative methods of measurement. However, the only basis for this statement is certain photographs offered in evidence late in the hearing and others attached to one of its briefs filed long after the evidentiary record was closed, which do show substantial erosion but from which its actual extent cannot be determined. Therefore, if Louisiana is right in its contentions, it would be necessary to reopen the case for further evidentiary hearings in order to establish its position. The present hearings must be terminated at some specific point in time, and the findings of the Special Master made based upon the evidence available as of that time.

Louisiana also insists that if, as has been held, its proposed Closing Line C was a proper closing line prior to December 6, 1969, then as a result it obtained certain vested rights in the area landward of that line of which it cannot now be dispossessed. However, if this were the case, its shoreline would be fixed at the furthest extent to which it ever projected, which would be contrary to the concept of an ambulatory shoreline. But in the second *Louisiana* opinion the Court has said:

> "Any line drawn by application of the rules of the Convention on the Territorial Sea and the Contiguous Zone would be ambulatory and would vary with the frequent changes in the shoreline." (394 U.S. 11, 32)

If such a line is ambulatory in the future depending upon change in the shoreline, then obviously it could have been equally ambulatory in the past, and in this instance this appears to have been the case.

It therefore follows that issue 6(f) must be answered in the affirmative, the natural entrance points of the bays being located at coordinates X = 2,644,940, Y = 134,910 at the western terminus; and at the eastern terminus at coordinates X = 2,677,650, Y = 138,050 prior to December 6, 1969, and at coordinates X = 2,672,315, Y = 141,745 thereafter. Issue 6(e) must also be answered in the affirmative, the date of the change being December 6, 1969. Issue 6(d) must be answered in the affirmative, and likewise Issue 6(c), but only prior to said date.

2. Bucket Bend Bay

Turning now to the easternmost area in controversy (designated as Issue 2 under the statement of issues), it becomes necessary to establish the closing line for Bucket Bend Bay, which is admitted by all parties to be a juridical bay. In order to do this, it is necessary to determine whether there exist in the area islands or low-tide elevations (there appears to be no distinction necessary between them. See second *Louisiana* opinion, 394 U.S. 11, 60, Note 80) which should be considered part of the mainland. The Court has established certain guidelines in the second *Louisiana* opinion for making this determination:

> "While there is little objective guidance on this question to be found in international law, the question

whether a particular island is to be treated as part of the mainland would depend on such factors as its size, its distance from the mainland, the depth and utility of the intervening waters, the shape of the island, and its relationship to the configuration or curvature of the coast. We leave to the Special Master the task of determining in the first instance—in the light of these and any other relevant criteria and any evidence he finds it helpful to consider—whether the islands which Louisiana has designated as headlands of bays are so integrally related to the mainland that they are realistically parts of the 'coast' within the meaning of the Convention on the Territorial Sea and the Contiguous Zone." (394 U.S. 11, 66)

In a note to this language, the Court points out that the enumeration is intended to be illustrative rather than exhaustive.

The United States places the southeastern terminus of the closing line of Bucket Bend Bay at a point on the mainland at coordinates X = 2,734,900, Y = 209,275. Louisiana, on the other hand, insists that it should be located at coordinates X = 2,738,320, Y = 210,230, on one of several low-water elevations located in the area, although it also offers alternative closing lines for consideration. That such low-water elevations in fact exist is established beyond question by the fact that they appear upon Map 2 of 8 of the set of 54 maps which has been stipulated by the parties to represent correctly the low-water line except where specific reservation to the contrary is made, which was not done in this area. The sole question therefore seems to be whether these low-water elevations should be assimilated to the coast so as to be treated as a part of it.

Applying the test outlined by the Court in the quotation given above, neither the size, distance from the mainland, depth and utility of the intervening waters, shape of the low-water elevations, or their relationship to the configuration or curvature of the coast indicate that they should be assimilated to and treated as a part of the mainland. While it is true that the Court leaves open the possibility of considering other relevant criteria and states that the list given is intended to be illustrative rather than exhaustive, this appears to be intended to leave open the question of whether islands or low-water elevations which meet the five suggested specific criteria may nevertheless fail to qualify as parts of the mainland rather than to suggest that islands or low-water elevations which fail to meet one or more of these specific tests may nevertheless be so assimilated. In any event, there appear to be no other criteria in the case of the low-water elevations under consideration which would lead to a contrary conclusion.

Louisiana alternatively proposes a southeastern terminus for the closing line on the mainland somewhat seaward of the point suggested by the United States. This, too, must be rejected because the configuration of the coast at this point is such that a closing line drawn to it cannot be said to enclose only landlocked waters. The natural entrance point of the bay on the southeast is therefore that proposed by the United States.

The parties also disagree as to the proper northwestern terminus of the closing line for Bucket Bend Bay. The United States proposes a point at X = 2,709,100, Y = 220,995, while Louisiana would place the terminus of the line at X = 2,708,835, Y = 221,440. The considerations just stated with respect to the southeastern terminus also govern here. The natural entrance point of the Bay is more ap-

propriately defined by the point suggested by the United States.

From this it follows that the closing line proposed by the United States must be adopted, and issue 2(b) answered accordingly. Therefore, issue 2(a) must be answered in the negative, and issue 2(b) answered in accordance with the contentions of the United States.

3. Blind Bay

A somewhat similar situation exists in connection with Blind Bay and the adjacent area. A closing line drawn between natural headlands of the bay itself located on the mainland would not affect the location of the three mile zone, and therefore is irrelevant. However, Louisiana insists that the closing line should not be drawn from these points but from certain mudlumps known as the South Mudlumps to others located off of Southeast Pass. Such a line, however, would not include solely landlocked waters in a coastal indentation, but a substantial area of open water beyond the coastal line. Furthermore, the mudlumps in question do not meet the criteria established by the Court for assimilation to the mainland, being quite small in area and removed a considerable distance from it. For this reason, they likewise do not screen the waters of the bay, and cannot be considered to create multiple mouths of it.

Louisiana has introduced a substantial amount of evidence as to the nature and origin of mudlumps, showing that they result from hydraulic forces generated by river action. From this the conclusion is urged that they are fluvial in nature, and therefore should be assimilated to the mainland, wherever located and whatever their size. This, however, does not necessarily follow. Unless the mudlumps, like other islands or low tide elevations,

meet the five specific tests of size, distance from the mainland, depth and utility of the intervening waters, shape, and relationship to the configuration or curvature of the coast, their nature and origin is immaterial, although a non-fluvial origin might be a negative factor if all of these tests were met. While the mudlumps here in question might meet the last three of these specific tests, they fail to meet the first two, and therefore cannot be considered as extensions of the mainland.

Louisiana also argues that under the holding in "*The Anna*", (1805) 5 C. Rob. 373, these mudlumps must be considered as extensions of the mainland as in that case certain mudlumps lying further from the coast were held to constitute such extensions for the purpose therein stated. That purpose, however, was not the determination of closing lines of bays under the Geneva Convention. The Supreme Court has considered this decision in Note 84 of its second *Louisiana* opinion where it says:

> "The United States argues that the decision is not in point because it had nothing to do with the delimitation of bays and merely held, as Article 10 of the Convention now provides, see n. 94 *infra*, that the three-mile belt is to be measured from islands in the same way as from the mainland. But if the Court had been of the view that the three-mile belt extended from islands as well as the mainland, it would not have had to decide that the mud islands were 'deemed the shore.' " (394 U.S. 11, 64)

The Court then considers a number of text writers upon the same subject, from all of which it derives the following conclusion:

> "Our discussion of these authorities should not be taken as suggesting that, under the now controlling Con-

vention on the Territorial Sea and the Contiguous Zone, every Mississippi River Delta mudlump or other insular formation is a part of the coast. We do believe, however, that the origin of the islands and their resultant connection with the shore is one consideration relevant to the determination of whether they are so closely tied to the mainland as realistically to be considered a part of it." (394 U.S. 11, 65)

In the light of the above, the holding in *"The Anna"*, supra, does not require a holding that the mudlumps here under consideration form a part of the coast, but merely establishes that they may do so, if they meet other established criteria, which, as has already been noted, they do not.

Accordingly, it follows that issues 3(a) and 3(d) should be answered in the negative. It then becomes unnecessary to answer issues 3(b) and 3(c).

4. Garden Island and Red Fish Bays

The area which encompasses Garden Island and Red Fish Bays also presents problems similar to those which have already been considered. These relate primarily to a group of mudlumps located below the mouth of Southeast Pass. All parties seem to agree that the nearest of these to the mainland is properly to be considered a part thereof, and that therefore one terminus of the closing line is at coordinates X = 2,725,550, Y = 153,430. It is likewise undisputed that the other terminus of the line is at coordinates X = 2,702,461, Y = 124,148. Both parties likewise concede that the line between these two points should be located somewhat seaward of a straight line between them due to the existence of the mudlumps in the area; but the United States takes the position that this seaward distortion is only to the extent of following the seaward low-

water line of islands or low-water elevations actually intersected by the straight line between the two points, while Louisiana takes the position that the closing line should lie between the seawardmost points on the low-water lines of islands lying entirely seaward of a straight line between the two points indicated. Again, Louisiana's position appears to be predicated upon the premise that these islands either constitute extensions of the mainland or screen the mouth of the bay. The evidence, however, does not support either of these contentions.

For reasons heretofore stated, except for the first of the series of islands on which the beginning point of the closing line is located, the islands in question do not bear the requisite relationship to the mainland at Southeast Pass to constitute extensions thereof. Louisiana insists, however, that once the closing line conceded by the United States is drawn, the waters within that closing line become inland waters and therefore constitute a part of the mainland, and that the relationship of the remaining islands to those inland waters therefore is in reality a relationship to the mainland which is sufficient to constitute them an extension thereof. Furthermore, Louisiana insists that once the nearest of the islands to that line has by this test been established as an extension of the mainland, then the relationship of the next most seaward island to the island so established constitutes it a further extension of the mainland, and thus by a kind of leapfrog relationship the furthest seaward of the islands relates back through the other islands and the waters of the bay to the mainland itself, all together constituting a single extension thereof sufficient to move the closing line seaward to the furthermost point on the low-water line of the furthermost island.

While for some purposes inland waters may be considered a part of the mainland, they are nevertheless waters and not land, and therefore land bodies lying adjacent to them are not assimilable to them as such, but retain their characteristics as islands. It seems apparent that when in its opinion the Court used the term "mainland," it used it to refer to an existing body of land and not to inland waters. Otherwise, a small island lying many miles from the nearest solid land might by virtue of its proximity to a bay closing line be considered an extension of the mainland.

Nor are the additional mudlumps relied upon by Louisiana as causing the closing line to deviate to the seaward sufficient to constitute a screen across the mouth of the bay, as they certainly do not cover a large percentage of the bay's opening, but only a very small portion of it at one terminus. Moreover, they are not located along the natural closing line of the bay, but extend in a seawardly direction from it.

It therefore follows that a closing line between the points indicated above must be adopted with a deviation to seaward only to the extent of following the seaward low-water lines of islands or low-water elevations intersected by it. Consequently issues 4(a) and 4(d) should be answered accordingly, and issue 4(c) in the negative, except for the single island immediately adjacent to Southeast Pass and any islands or low-water elevations intersected by a straight line between the two points described above. It then becomes unnecessary to answer issue 4(b), as even should it be answered in the affirmative, those islands here involved lying seaward of the closing line described and not intersected by it do not by their location and physical characteristics meet the requisite test for the forming of multiple mouths of the bay.

5. South Pass

The sole problem in this area relates to the existence or non-existence of certain mudlumps, which do not appear on the set of 54 maps stipulated by the parties as accurately reflecting the low-water line along the cost of Louisiana. This is one of the areas, however, where the State of Louisiana has reserved an exception to that stipulation and therefore has the right to question the accuracy of those maps.

The investigation of the area which was undertaken as a basis for the preparation of those maps, however, seems to have been of sufficient accuracy to preclude the existence of the mudlumps at that time. This likewise raises a presumption of their prior non-existence, which evidence offered by Louisiana to the contrary is not sufficient to overcome. However, the United States concedes that in 1970 the mudlumps did in fact exist, any lack of indication thereof on pertinent charts to the contrary notwithstanding. Furthermore, the United States concedes that although under the Geneva Convention the low-water line along the coast is to be determined upon the basis of large-scale charts as published by the coastal nation, extrinsic evidence is admissible to show significant deviations on such charts from the actual low-water line, in which case the actual low-water line prevails. Certainly the existence of the mudlumps in question would be such a significant deviation. Accordingly, the United States proposes a line between the tips of the jetties at coordinates X = 2,702,461, Y = 124,148, and X = 2,701,735, Y = 123,905, a salient point on the low-water line of the land formation extending southwesterly from a natural levee of South Pass at coordinates X = 2,699,435, Y = 118,600 and the western shore of an elongated mudlump lying seaward

of that formation between the points X = 2,697,300, Y = 118,500 and X = 2,697,850, Y = 117,200. After January 1970, the United States would also include points on the mudlump in question located at coordinates X = 2,699,695, Y = 116,700 and X = 2,699,815, Y = 116,700 and X = 2,699,815, Y = 116,800.

These points on the low-water line appear to be supported by the evidence in the record; however, if the mudlump in question existed in January 1970 despite contrary indications on charts of the area, then there is no reason to suppose that it did not exist at an earlier time, back to sometime after 1959, the date of the set of 54 maps, the preparatory work which indicated its absence. As early as 1960-61 Dr. Morgan apparently made studies of the area indicating the presence of this particular mudlump, and in 1961 took a photograph of it. Subsequent photographs were also taken in 1963 and 1964 and on other dates thereafter. From this it appears that the existence of the mudlump is well established by extrinsic evidence as early as January 1961 and that the new low-water line suggested by the United States should be adopted as of that date rather than January 1970. Therefore, in response to issue 5(c), Louisiana is entitled to submerged lands measured from islands or low tide elevations shown on chart 1272 except to the extent that that chart may be shown by extrinsic evidence to be significantly inaccurate. Issue 5(d) may be answered by reference to a mudlump which lies between coordinates X = 2,697,300, Y = 118,500 and X = 2,697,850, Y = 117,200, and subsequent to January 1961, another mudlump lying between X = 2,699,695, Y = 116,700 and X = 2,699,815, Y = 116,800, and issue 5(e) by reference to the latter of these two mudlumps.

6. Ascension-Caminada-Barataria Bay Complex

East Bay having already been considered, moving westward the next area reached is that surrounding Ascension, Caminada and Barataria Bays. A basic question which, if answered in the affirmative, will obviate the necessity of dealing with some minor problems in the area, is whether this entire complex defined by a straight line between the tip of the eastern Belle Pass jetty on the west and the tip of the east jetty at Southwest Pass on the east (the outermost closing line, although others also more than twenty-four miles in length could also be drawn) constitutes an over-large bay within the meaning of Article 7 of the Convention on the Territorial Sea and the Contiguous Zone. All of the evidence in the record indicates that it does. Certainly its waters are landlocked, or, as sometimes described, *Inter Fauces Terrai*, within well marked natural entrance points. This is supported by the ratio of its depth of penetration to the width of its mouth, for it is almost perfectly semicircular in shape, the classic form of a bay. In this respect, it bears a startling resemblance to Monterey Bay, which was held to be a true bay in the California case. And in the second *Louisiana* opinion the Court has held that it meets the semicircle test, saying:

> "We have concluded, on the other hand, that the area of 'Ascension Bay' does include the Barataria Bay-Caminada Bay complex and therefore meets the semicircle test. Those inner bays are separated from the larger 'Ascension Bay' only by the string of islands across their entrances. If those islands are ignored, the entrance to Barataria and Caminada Bays is sufficiently wide that those bays and 'Ascension Bay' can reasonably be deemed a single large indentation even under the United States' approach. Article 7(3) pro-

vides that for the purposes of calculating the semicircle test, '[i]slands within an indentation shall be included as if they were part of the water areas of the indentation.' The clear purpose of the Convention is not to permit islands to defeat the semicircle test by consuming areas of the indentation. We think it consistent with that purpose that islands should not be permitted to defeat the semicircle test by sealing off one part of the indentation from the rest. Treating the string of islands 'as if they were part of the water area' of the single large indentation within which they lie, 'Ascension Bay' does meet the semicircle test." (394 U.S. 11, 52-53)

If Ascension Bay is an over-large bay within the meaning of the Geneva Convention, then, wherever its natural entrance points may be located, it is necessary to establish a fall-back line 24 miles in length. This Louisiana fixes as a line between coordinates X = 2,406,890, Y = 189,733 and X = 2,550,402, Y = 216,158. With this the United States does not appear to take issue, assuming that Ascension Bay is an over-large bay, which it denies. The first part of issue 7(a) must therefore be answered in the affirmative as to the entire area of Ascension Bay, and the second part thereof by specifying the tip of the east jetty at Belle Pass and the tip of the east jetty at Southwest Pass as the natural entrance points of the bay, although others producing a closing line of more than twenty-four miles could also be selected. The fall-back line for purposes of establishing the coast line can then be fixed as indicated above. In view of this, it becomes unnecessary to answer many of the issues under Sections 8 and 10 of the statement of issues, but some still remain, which can then be disposed of as follows:

(a) The closing line at the mouth of West Bay runs from a point on the north coast of Southwest Pass, at X = 2,615,475, Y = 113,900 (approximately 3.7 miles from the tip of the jetty), to a point a few hundred yards west of the southern mouth of Pass du Bois at X = 2,615,450, Y = 157,770.

(b) The baseline from Pass du Bois to Sandy Point follows the low-water line except where it closes two minor indentations. The first of these is the northern mouth of Pass du Bois whose closing line runs from X = 2,613,550, Y = 164,745 to X = 2,613,585, Y = 166,700. The second is an unnamed indentation just south of Tiger Pass whose closing line runs from X = 2,614,070, Y = 171,910 to X = 2,611,490, Y = 176,505.

(c) There is a low-water area near Pass du Bois shown on large-scale charts prior to December 6, 1969. This area did not in fact exist above mean low water subsequent to that date and is therefore not a part of the coastline at the present time; but prior thereto its seaward low water line formed a part of the above base line.

(d) An artificial spoil bank extending into the Gulf from the northern headland of Pass Tante Phine in 1959 is no longer part of the coast line. This spoil bank did, however, exist as part of the coast line from November 19, 1959 to February 1960.

(e) Another spoil bank existed in the area for two short periods of relevance here but is no longer a part of the coast line. This bank, just north of 29° 10′ north latitude, existed from January 1959 through March 1959 and March 1964 through July 1964.

(f) The area near the mouth of Sandy Point Bay is governed by two salient points on the low-water

line, X = 2,587,400, Y = 205,250 and X = 2,585,000, Y = 206,975, rather than by the closing line proposed by Louisiana.

(g) The area near the entrance to Scofield Bayou is governed by salient points on the low-water line, X = 2,565,940, Y = 212,988 and X = 2,563,010, Y = 214,045, rather than by the closing line proposed by Louisiana.

(h) The area near an unnamed indentation east of Bay Champagne is governed by a salient point on the low-water line, X = 2,376,485, Y = 164,409 rather than by the closing line proposed by Louisiana.

(i) The area at the mouth of Pass Fourchon is governed by salient points on the low-water line, X = 2,367,695, Y = 158,943, and X = 2,366,789, Y = 158,537, rather than by the closing line proposed by Louisiana.

7. Timbalier Bay

Applying the same principles to the Timbalier Bay area, the questions there involved can be disposed of summarily:

(a) The closure of the mouth of Timbalier Bay between the natural entrance points on Timbalier Island and an unnamed island to the east must be defined by a line well landward of that proposed by Louisiana, the result being that such a line would have no effect on the outer limits of waters subject to the jurisdiction of the State of Louisiana which are governed by salient points on the low-water line at X = 2,339,651, Y = 150,598 and X = 2,337,450, Y = 149,987.

(b) The next opening to Timbalier Bay, approximately 3 miles to the west, is likewise so far inland

that the area is governed by salient points on the mainland at X = 2,320,164, Y = 143,811 and X = 2,319,608, Y = 143,421.

8. Caillou Bay

One of the most difficult areas involved in this litigation is that known as Caillou Bay. It is obvious that were it not for the existence of the Isles Dernieres, there would be no question of the existence of a bay at this location, for without them there is no indentation in the coastline enclosing landlocked waters between clearly defined natural entrance points. Therefore those islands cannot be considered as screening islands across the mouth of a bay which would exist in their absence. The only theory on which a bay can be said to exist at all is if the Isles Dernieres are considered as extensions of the mainland so as to form one of its shores.

This argument appears to have been foreclosed by the holding of the Court in the second *Louisiana* opinion where it is said:

> "At several places (here the Court notes [Note 87] that one such place is Caillou Bay) the question is raised whether areas between the mainland and fringes or chains of islands along the coast are inland waters. The parties agree that no article of the Convention specifically provides that such areas are inland waters. Louisiana argues that they are inland waters, under any one of several theories: that such island fringes form the perimeter of bays under Article 7, that straight baselines must be drawn along the islands under Article 4, or that the waters should be deemed 'inland' under general principles of international law which antedate and supplement the Convention on the

Territorial Sea and the Contiguous Zone. The position of the United States is that such island chains can be taken into account as enclosing inland waters only by drawing straight baselines; yet the decision whether to draw such baselines is within the sole discretion of the Federal Government, and the United States has not chosen to do so.

We have concluded that Article 7 does not encompass bays formed in part by islands which cannot realistically be considered part of the mainland. Article 7 defines bays as indentations in the 'coast,' a term which is used in contrast with 'islands' throughout the Convention. Moreover, it is apparent from the face and the history of the Convention that such insular formations were intended to be governed solely by the provision in Article 4 for straight baselines." (394 U.S. 11, 66-68)

To the first sentence of the second paragraph quoted above, the Court appends the following note:

> "Louisiana does not contend that any of the islands in question is so closely aligned with the mainland as to be deemed a part of it, and we agree that none of the islands would fit that description." (394 U.S. 11, 67, Note 88)

Louisiana now insists that the position attributed to it in this note is based upon a misunderstanding; however, this does not alter the fact that regardless of that position, the Court independently reached the conclusion that none of the islands in the Caillou Bay area does fit the description of islands which could realistically be considered part of the mainland. In the absence of such a holding the Special Master would upon the evidence presented before

him be inclined to hold that based upon their size, proximity, configuration, orientation and nature these islands would constitute an extension of the mainland and would therefore hold that Caillou Bay is a juridical bay with a closing line between points at coordinates X = 2,117,317, Y = 143,491 and X = 2,076,201, Y = 189,799. This would appear to be in accord with the view of the Special Master in the case of *United States* v. *Florida,* No. 52 original, in regard to certain of the Florida Keys. But the language of the Court quoted above appears to require a holding that there is no configuration in the area which meets the requirements of a bay, and therefore nothing for which a closing line could be determined. This also disposes of Louisiana's argument in regard to islands lying within or near the mouth of a bay, whether intersected by its closing line or not, as if there is no bay and no closing line in the absence of those islands, then they cannot be intersected by it nor can it be extended around their outward boundaries.

Louisiana, however, maintains that the Court's holding is based on erroneous geographical information and therefore should be disregarded. It has, however, stipulated as to the correctness of the set of 54 maps in this area, and therefore cannot now challenge them by attempting to show the existence of additional land masses or broader low water lines for recognized land masses in the area except on the landward side of the islands where no low water lines are shown upon the set of 54 maps. Even in the light of the new evidence offered, the Special Master would still consider the finding which as indicated above he would make in the absence of a specific directive by the Court to be violative of that directive.

It therefore follows that as issue 11(a) must be answered in the negative under the Court's opinion,

issue 11(b) must also be answered in the negative. Issue 11(e) then becomes immaterial and issue 11(f) must likewise be answered in the negative. Issues 11(g) and (h) need not be answered, and issues 11(i) and (j) are answered in the negative. In determining the low-water line at the rear of the island fringe here involved, as no such line is shown upon the stipulated maps, the contention of Louisiana must be accepted, there being no proof to the contrary.

9. Atchafalaya Bay

The Court in the second *Louisiana* opinion has already held that Atchafalaya Bay is a true bay (394 U.S. 11, 40). The only question therefore is where its proper closing line lies. The location suggested by Louisiana would make that line more than 24 miles in length, and therefore would constitute it an over-large bay and require the determination of a fallback line. The line suggested by the United States, on the other hand, would be less than 24 miles and would therefore require no such determination. In either case, it should be recognized that there are points lying seaward of such closing line which in certain cases would furnish the base for determining the width of the waters subject to the jurisdiction of the State of Louisiana (see *U. S.* v. *Louisiana*, 4th Supp. Decree, 409 U.S. 17, 34 L.Ed.2d 705, 93 S. Ct. 1478 (1972)).

In reaching its conclusion, Louisiana insists that there are low tide elevations west of Point au Fer and on Shell Keys which should be considered part of the mainland, and therefore can be used as natural entrance points for Atchafalaya Bay. However, in each case, the size and location of the elevations makes it impossible realistically

to view them as extensions of the mainland. Alternatively, Louisiana proposes a closing line of more than 24 miles whose eastern terminus on Point au Fer coincides with that selected by the United States but whose western terminus is Mound Point on Marsh Island (instead of South Point proposed by the United States). This, too, must be rejected because the relation of Mound Point to the coast is such that a line drawn to it would include waters that cannot be viewed as "landlocked". The natural entrance to Atchafalaya Bay on the west is clearly South Point.

Issues 12(a) and 12(b) should therefore be answered in the negative, and Issue 12(c) by points located at coordinates X = 1,993,420, Y = 241,930 and X = 1,863,474, Y = 298,772, in accordance with the submission of the United States. Since the closing line between these points does not exceed 24 miles, it is unnecessary to answer Issue 12(d).

CONCLUSION

Based upon the foregoing holdings and the stipulations between the parties, it should be possible to draw a baseline along the entire coast of the State of Louisiana from which the extent of the territorial waters under the jurisdiction of the State of Louisiana pursuant to the Submerged Lands Act can be measured. It is therefore recommended that the parties be ordered to prepare and file such a decree establishing such a line with the Court for entry. If this cannot be done by agreement, further reference may be necessary to the Special Master in order to reconcile differences between the parties. In any event, recognizing

that the coastline is ambulatory, it is recommended that this cause be retained in court for the purpose of determining any future changes therein.

Respectfully submitted,

WALTER P. ARMSTRONG, JR.
Special Master

July 31, 1974

APPENDIX A-1

PRETRIAL STATEMENT

The United States and the State of Louisiana jointly submit the following pretrial statement:

Part A sets out the issues that the parties now believe are before the Special Master under the Supreme Court's order of May 19, 1969. This statement is arranged in geographical sequence according to the areas affected by the various issues, proceeding from east to west. Under each area are stated the issues that affect it; where such an area includes smaller areas affected by particular issues, the smaller areas are listed after the larger area, with the issues affecting each. Although the questions are stated unconditionally, it is understood that in a number of instances the parties propose them alternatively.

Part B states the understanding reached regarding geographical facts.

Part C contains suggestions regarding procedure.

A

1. From Errol Shoal to the western headland of Sandy Point Bay. (U.S.C. & G.S. Charts Nos. 1270 and 1272; Maps 6-7 of 41 and 1-7 of 8, La. Ex. 119 pp. 6-14.)

(a) Did actions of the United States prior to this suit have the legal effect of utilizing straight baselines to delimit inland waters?

(b) Have changes in geographical configurations divested Louisiana of title to any submerged lands in this area?

(c) Have changes in law divested Louisiana of title to any submerged lands in this area?

(d) Does this area include any historic inland waters under principles of international law, particularly at Isle au Breton Bay, East Bay or West Bay?

(e) Does this area include any historic territorial waters under principles of international law, particularly at Isle au Breton Bay, East Bay or West Bay, and if so, what is the effect?

2. From Dead Woman Pass to North Pass. (U.S.C. & G.S. Chart No. 1272; Maps 1 and 2 of 8, La. Ex. 119 pp. 8-9.)

(a) Are there islands or low-tide elevations that should be considered part of the mainland?

(b) What closing line meets the semicircle test?

3. From Pass a Loutre to Southeast Pass, including Blind Bay. (U.S.C. & G.S. Chart No. 1272; Maps 2 and 3 of 8, La. Ex. 119 pp. 9-10.)

(a) Are there islands or low-tide elevations that should be considered part of the mainland?

(b) If the closing line of Blind Bay affects the three-mile limit, where are the natural entrance points between which the closing line should be drawn?

(c) Should islands or low-tide elevations be regarded as forming separate mouths of a bay if one or more direct lines could be drawn between other natural entrance points of the bay so as to run wholly landward of such islands or low-tide elevations?

(d) Are there islands or low-tide elevations at Blind Bay that form separate mouths to it?

4. From Southeast Pass to South Pass, including Garden Island and Redfish bays. (U.S.C. & G.S. Chart No. 1272; Maps 3 and 4 of 8, La. Ex. 119, pp. 10-11.)

(a) Which islands or low-tide elevations off Southeast Pass should be considered part of the mainland?

(b) Should islands or low-tide elevations be regarded as forming separate mouths of a bay if one or more direct lines could be drawn between other natural entrance points of the bay so as to run wholly landward of such islands or low-tide elevations?

(c) Are there islands or low-tide elevations off Southeast Pass that form such separate mouths of the Garden Island-Redfish Bay complex?

(d) Where are the natural entrance points of the Garden Island-Redfish Bay complex?

5. South Pass. (U.S.C. & G.S. Chart No. 1272; Map 4 of 8, La. Ex. 119 p. 11.)

(a) What are the means of proof recognized by the Convention on the Territorial Sea and the Contiguous Zone for ascertaining whether particular elevations are above the level of mean low water?

(b) Does the Convention on the Territorial Sea and the Contiguous Zone control the kind of evidence that may be introduced in this case to identify low-water lines?

(c) Is Louisiana entitled to submerged lands measured from such islands or low-tide elevations as shown on Chart No. 1272 irrespective of evidence to the contrary?

(d) Where are there islands or low-tide elevations off the mouth of South Pass?

(e) Have there been changes in the coast line that would affect the future distribution of revenues heretofore

accrued since June 5, 1959, and, if so, when did the changes become effective?

6. From South Pass to Southwest Pass: East Bay. (U.S.C. & G.S. Chart No. 1272; Maps 4-6 of 8, La. Ex. 119 pp. 11-13.)

(a) What are the means of proof recognized by the Convention on the Territorial Sea and the Contiguous Zone for ascertaining whether particular elevations are above the level of mean low water?

(b) Does the Convention on the Territorial Sea and the Contiguous Zone control the kind of evidence that may be introduced in this case to identify low-water lines?

(c) Is Louisiana entitled to submerged lands measured from such low-tide elevations or low-water lines as shown on Chart No. 1272 adjacent to South Pass but not shown on Map 4 of 8, irrespective of evidence to the contrary?

(d) Are there low-tide elevations or low-water lines in East Bay adjacent to South Pass not shown on Map 4 of 8 but shown on Chart No. 1272?

(e) Have there been changes in the coast line that would affect the future distribution of revenues heretofore accrued since June 5, 1950 and, if so, when did the changes become effective?

(f) Within East Bay, are there any bays as defined by Article 7 of the Convention on the Territorial Sea and the Contiguous Zone and, if so, where are their natural entrance points?

7. From Southwest Pass to Belle Pass: Ascension-Caminada-Barataria Bay complex. (U.S.C. & G.S. Charts No. 1272, 1273 and 1274; Maps 6-8 of 8 and 8-14 of 41, La. Ex. 119 pp. 13-22.)

(a) Is part or all of this area an overlarge bay as provided for by Article 7 of the Convention on the Territorial Sea and the Contiguous Zone and if so, where is its western natural entrance point?

8. From West Bay to Pass Tante Phine. (U.S.C. & G.S. Chart No. 1272; Maps 7 and 8 of 8, La. Ex. 119 pp. 14-15.)

(a) What are the means of proof recognized by the Convention on the Territorial Sea and the Contiguous Zone for ascertaining whether particular elevations are above the level of mean low water?

(b) Does the Convention on the Territorial Sea and the Contiguous Zone control the kind of evidence that may be introduced in this case to identify low-water lines?

(c) Is Louisiana entitled to submerged lands measured from such low-tide elevations or low-water lines as shown on Chart No. 1272 between Pass du Bois and Pass Tante Phine but not shown on Maps 7 and 8 of 8, irrespective of evidence to the contrary?

(d) Where are there low-tide elevations or low-water lines in this area?

(e) Have there been changes in the coast line that would affect the future distribution of revenues heretofore accrued since June 5, 1950, and if so, when did the changes become effective?

9. From Sandy Point Bay to Scofield Bayou. (U.S.C. & G.S. Chart No. 1272; Maps 8 of 8 and 8 of 41, La. Ex. 119 pp. 15-16.)

(a) What are the means of proof recognized by the Convention on the Territorial Sea and the Contiguous Zone for ascertaining whether particular elevations are above the level of mean low water?

(b) Does the Convention on the Territorial Sea and the Contiguous Zone control the kind of evidence that may be introduced in this case to identify low-water lines?

(c) What is the mean low-water line, between 89° 30′ W. and 89° 32′ W.?

(d) Have there been changes in the coast line that would affect the future distribution of revenues heretofore accrued since June 5, 1950 and, if so, when did the changes become effective?

10. Caminada-Barataria Bay complex. (U.S.C. & G.S. Chart No. 1273; Maps 10-12 of 41, La. Ex. 119 pp. 18-20.)

(a) Should islands or low-tide elevations be regarded as forming separate mouths of a bay if one or more direct lines could be drawn between other natural entrance points of the bay so as to run wholly seaward of such islands or low-tide elevations.

(b) Do Grand Isle and the Grand Terre Islands form such separate mouths of the Caminada-Barataria Bay complex?

(c) Where are the natural entrance points of the Caminada-Barataria Bay complex?

11. Caillou Bay. (U.S.C. & G.S. Chart No. 1275; Maps 19-22 of 41, La. Ex. 119 pp. 27-30.)

(a) Should the Isles Dernieres be considered part of the mainland?

(b) Is Caillou Bay a bay as defined by Article 7 of the Convention on the Territorial Sea and the Contiguous Zone?

(c) Is Caillou Bay an historic bay under principles of international law?

(d) Did actions of the United States prior to this suit have the legal effect of utilizing straight baselines to close Caillou Bay?

(e) Should islands or low-tide elevations be regarded as forming separate mouths of a bay if one or more direct lines could be drawn between other natural entrance points of the bay so as to run wholly landward of such islands or low-tide elevations?

(f) Do the Isles Dernieres form such separate mouths of a bay between the points x = 2,157,920, y = 135,521, and x = 2,076,730, y = 189,630?

(g) Where are the natural entrance points of Caillou Bay?

(h) If Caillou Bay is inland waters, how is the three-mile belt measured south of the Isles Dernieres?

(i) Have changes in geographical configurations divested Louisiana of title to any submerged lands in this area?

(j) Have changes in law divested Louisiana of title to any submerged lands in this area?

12. Atchafalaya Bay. (U.S.C. & G.S. Charts Nos. 1276 and 1277; Maps 25-26 of 41 and 1-5 of 5, La. Ex. 119 pp. 33-39.)

(a) Are there low-tide elevations west of Point au Fer that should be considered part of the mainland? (U. S.C. & G.S. Chart No. 1276; Map 1 of 5, La. Ex. 119 p. 34.)

(b) Should the Shell Keys south of Marsh Island be considered part of the mainland? (U.S.C. & G.S. Chart No. 1277; Map 4 of 5, La. Ex. 119 p. 37.)

(c) Where are the natural entrance points of Atchafalaya Bay?

(d) If the distance between the natural entrance points exceeds 24 miles, where should the closing line or lines be drawn?

STIPULATION TO AMEND JOINT PRETRIAL STATEMENT OF DECEMBER 1969

The United States of America and the State of Louisiana hereby amend the Joint Pretrial Statement of December 1969 in this case identified as Exhibit A of the Pretrial Order of the Special Master of April 27, 1970, as follows:

1. Paragraph 8 of Part A is amended by inserting after the words "Pass Tante Phine" in the first line, a comma followed by the words "including its artificial northern outlet at about latitude 29° 10′ 10″ N."

2. Paragraph 9 of Part A is deleted.

3. Paragraph 12 of Part A is amended by adding new paragraphs (d) and (e) as follows:

(d) Are the waters in the vicinity of the Shell Keys south of Marsh Island Historic inland waters under principles of international law?

(e) Did actions of the United States prior to this suit have the legal effect of utilizing straight baselines around the Shell Keys south of Marsh Island?

Respectfully,

/s/ Erwin N. Griswold
Solicitor General of the United States

Jack P. F. Gremillion
Attorney General of the State of Louisiana

Dated:

APPENDIX A-2

STIPULATION

1. For the sole purpose of expediting the ultimate resolution of this case, and without deciding whether Chandeleur or Breton Sounds are inland waters, it is hereby finally stipulated by the United States and Louisiana jointly that the landward limit of the submerged lands of the continental shelf in which the United States has the exclusive right to explore and exploit the natural resources as against the State of Louisiana in the area between the Mississippi boundary and Breton Island is a line three geographical miles seaward from the line hereinafter described, and the State of Louisiana has the exclusive right to explore and exploit the natural resources landward thereof as against the United States.

The said line is as follows:

	X	Y
A line from	2,752,565	568,525
Through	2,775,787	513,796
Through	2,777,512	513,071
Through	2,779,032	512,013
Through	2,780,766	510,417
Through	2,782,059	508,914
Through	2,784,689	505,455
Through	2,788,518	498,898
Through	2,790,051	496,115
Through	2,791,690	491,970
Through	2,794,789	481,712
Through	2,796,202	475,864
Through	2,797,209	468,763

	X	Y
Through	2,797,456	463,898
Through	2,797,455	458,119
Through	2,797,067	452,190
Through	2,795,853	442,333
Through	2,794,722	436,006
Through	2,793,260	430,155
Through	2,790,415	420,878
Through	2,788,165	414,646
Through	2,786,724	410,834
Through	2,783,250	403,219
Through	2,779,673	397,140
Through	2,777,922	394,224
Through	2,776,487	392,403
Through	2,775,343	391,771
Through	2,774,819	390,716
Through	2,774,670	390,293
Through	2,773,972	389,724
Through	2,772,541	387,391
Through	2,770,599	383,887
Through	2,768,775	381,521
Through	2,768,031	380,244
Through	2,767,052	379,676
Through	2,766,408	378,524
Through	2,761,138	371,491
Through	2,758,093	367,862
Through	2,757,465	366,796
Through	2,755,709	364,596
Through	2,755,015	363,480
Through	2,749,221	357,797
Through	2,746,309	355,438
Through	2,744,222	354,125
Through	2,743,352	353,794
Through	2,742,583	353,754
Through	2,727,653	334,120

	X	Y
Through	2,726,852	333,103
Through	2,723,975	330,868
Through	2,722,321	329,172
Through	2,720,696	326,779
Through	2,717,012	320,677
Through	2,715,236	318,391
Through	2,714,633	317,731
Through	2,713,324	316,801
Through	2,711,772	316,107
Through	2,710,380	315,995
To	2,689,683	308,890

with the sole exception that the landward limit may vary seaward in the area behind the line three geographical miles seaward from the line drawn from the point x = 2,737,288, y = 345,654, to the point x = 2,755,325, y = 204,680, if the State of Louisiana prevails in its historic or straight baseline claims to that area.

2. In entering this stipulation, Louisiana maintains its position that the whole of Chandeleur Sound and Breton Sound are inland waters, that straight baselines have in effect been drawn from Mississippi around the Delta and that for this and other reasons and other actions taken by both governments these are historic waters. Louisiana recognizes, however, the United States position that these are not wholly inland waters, and agrees that Louisiana does not and will not base its arguments regarding the inland status of these or any other waters in this or any future litigation between it and the United States, upon this stipulation, upon the action of the United States in fixing the Chapman Line in this area, or upon prior concessions regarding this area made by the United States

for the purpose of this case and the predecessor case, *United States* v. *Louisiana*, 339 U.S. 699.

3. In entering this stipulation, the United States maintains that its agreement is not based on the belief that these are historic inland waters or described by a system of straight baselines, or on any other basis than is set out at pages 120-126 of the Brief for the United States, on Cross-Motions for the Entry of a Supplemental Decree as to the State of Louisiana (No. 2), in this case in 1968, and at pages 76-79 of the Reply Brief for the United States in the same cause. The United States maintains its position, there stated, that those parts of this area which are beyond normal territorial waters measured from closing lines of juridical bays and the low-water line of the mainland and islands are high seas.

4. The agreements as to the series of 54 maps heretofore stated in the Statement of Issues of December 1969 shall stand.

5. It is also agreed that the entire coastline of Louisiana except for the area referred to in Paragraph 1 and the agreements as to the location of the shoreline referred to in Paragraph 4 is in dispute in this litigation without regard to previous agreements made subsequent to the 1969 opinion in this case, and with full opportunity to both parties for discovery and testimony.

Executed this 21st day of January, 1971.

United States of America
By /s/ Erwin N. Griswold
Solicitor General

State of Louisiana
By /s/ Jack P. F. Gremillion
Attorney General

APPENDIX B

1. Title to Louisiana's coastal inland waters passed to the State in 1812 by virtue of its act of admission to the Union. While the United States retained title to all public lands, title to navigable inland water-bodies, including bays, vested in the State of Louisiana upon its admission. This title was confirmed to Louisiana under the doctrine recognized in *Pollard's Lessee* v. *Hagan*, 44 U.S. (3 How.) 212 (1845). (See 363 U.S. 1, 66 (1960) n. 108.)

2. Commencing in 1870, Louisiana enacted legislation to regulate oyster fishing in its coastal bays.

3. Since 1886 Louisiana has legislatively reaffirmed its title to bays along its coast, including those in the delta. (Acts of 1886, 1892, 1902, 1904, and 1910).

4. Louisiana has granted oyster leases in the shallow waters of many Mississippi delta bays subsequent to the above legislation.

5. Statutes regulating shrimping in Louisiana have defined the inside waters of the delta area (to which stringent closed season laws have applied) as follows:

Act 103 of 1926:

> All . . . bays and sounds found along the Louisiana Coast of the Gulf of Mexico.

Act 143 of 1942:

> All . . . bays and sounds along the Louisiana coast, and all other waters in and contiguous to the Gulf of Mexico *whether or not partly enclosed by* islands, sand [s]pits, marshes, or *delta fingers*, wherein the water is less than three (3) fathoms in depth.

Act 51 of 1948:

> The inside waters shall include . . . Breton Sound, . . . Blind Bay, Garden Island Bay, East Bay, West Bay . . . and all other bays and sounds along the Louisiana coast. . . .

6. Since the early 1900s the Louisiana Wild Life and Fisheries Commission and its predecessor agency, the Department of Conservation, have from time to time used a system of boat and aircraft patrol in which imaginary lines joining outermost mudlumps and other features marking the seaward terminus of the passes have been utilized to determine a belt of waters lying three miles from such lines for purposes of such patrol.

7. On at least one occasion arrests have been made and fines levied against persons violating Louisiana's statutes inside the areas of the delta described above, regardless of nationality (See 12 below).

8. In patrolling Louisiana's coastal inland waters, enforcement agents of the Conservation Department and the Wild Life and Fisheries Commission have used armed vessels or have themselves been armed and have used armed force to arrest violators of Louisiana's laws.

9. Both United States citizens and foreign nationals, including Japanese, Chinese, Filipino, Mexican, and Spanish fishermen, have been required to obtain Louisiana licenses to fish in Louisiana waters.

10. Licenses of fishermen fishing in Louisiana waters have been checked by Wild Life and Fisheries enforcement personnel without regard to nationality.

11. Regardless of nationality, persons caught fishing without a license within Louisiana waters or three miles

seaward from the mouth of any bay included therein have been arrested and have had charges filed against them by Louisiana enforcement officers.

12. About 1946, personnel on three Mexican fishing vessels were arrested by an aerial law enforcement agent for the Wild Life and Fisheries Commission for violating the closed shrimping season in East Bay. These arrests were made outside of a 3-mile belt from the shore and inside the East Bay closure claimed by Louisiana.

13. Louisiana enacted Act 68 of 1932, Act 367 of 1940, Act 385 of 1948, and Act 386 of 1948 to prevent pollution of State waters.

14. Enforcement agents of the Wild Life and Fisheries Commission have conducted pollution control activities in East Bay consistent with Louisiana pollution control statutes and have issued citations for failure to comply with these regulations.

15. Louisiana issued mineral leases under Act 30 of 1915 as amended by Act 315 of 1926 covering most of the Mississippi delta bays prior to issuance of the Truman Proclamation in 1945. These included Mineral Lease 192 in 1928 covering West Bay and East Bay, Mineral Lease 195 in 1928 covering Grand Bay, Grand Coquille Bay and many other bays to the north of the delta contiguous with Breton Sound, and Mineral Lease 335 in 1935 covering Paddy Bay, Bull Bay, Delta Bend, Quarantine Bay, Breton Sound and Chandeleur Sound. Portions of these leases remain active.

16. Louisiana's claim to waters of the delta lying between and adjacent to the passes of the Mississippi River has never been disputed or questioned by foreign governments, nor was the claim disputed by the United States government until the inception of this lawsuit in 1948.

Supreme Court, U. S.
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No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

ON THE REPORT OF THE SPECIAL MASTER

EXCEPTIONS OF THE UNITED STATES AND SUPPORTING MEMORANDUM

ROBERT H. BORK,
Solicitor General,
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In the Supreme Court of the United States

OCTOBER TERM, 1974

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

ON THE REPORT OF THE SPECIAL MASTER

EXCEPTIONS OF THE UNITED STATES

The United States takes exception to three determinations by the Special Master as to the location of the coastline of the State of Louisiana:

1. The United States excepts to the Special Master's finding (Report, pp. 32–35) that there have been, for any period relevant to this litigation, subsidiary bays within East Bay, the closing lines of which affect the seaward limit of Louisiana's Submerged Lands Act grant.

2. The United States next excepts to the Special Master's finding (Report, p. 47) that particular low-water elevations near Pass du Bois existed as part of the baseline until December 6, 1969.

3. The United States further excepts to the Special Master's finding (Report, pp. 45–46) that Ascension Bay is an overlarge bay within the meaning of the Geneva Convention on the Territorial Sea and the Contiguous Zone, Article 7(5).

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

November 1974.

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 9, Original

UNITED STATES OF AMERICA, PLAINTIFF
v.
STATE OF LOUISIANA, ET AL.

ON THE REPORT OF THE SPECIAL MASTER

MEMORANDUM FOR THE UNITED STATES IN SUPPORT OF ITS EXCEPTIONS

STATEMENT AND INTRODUCTION

Since 1948 the United States and the State of Louisiana have been engaged in litigation over the right to exploit the valuable mineral resources of the seabed off the coast of that State. See *United States* v. *Louisiana,* 339 U.S. 699. The case has been before this Court, on the merits or on procedural issues, on a score of previous occasions. It now returns, hopefully for the last time,[1] on the Report of the Special Master appointed five Terms ago.

[1] To be sure, after disposing of the Exceptions to the Report filed by each of the parties, the Court will ultimately be asked to enter a formal decree precisely delimiting the boundary be-

1. We need not, however, rehearse the entire past history. The present controversy begins with a new suit filed by the United States in 1955, two years after the enactment of the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301, *et seq.* See 350 U.S. 990. The Court ultimately held, in 1960, that Congress had quitclaimed to Louisiana the lands underlying the Gulf of Mexico within 3 geographical miles of the "coastline." *United States* v. *Louisiana,* 363 U.S. 1. In the same decision, the United States was declared entitled to the natural resources of the seabed further seaward. However, neither the 3-mile boundary, nor the baseline from which it must be measured, was located. The decree subsequently entered simply defined the coastline in the language of the Submerged Lands Act, 43 U.S.C. 1301(c): "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters," 364 U.S. 502. 503. And, recognizing

tween State and Federal submerged lands and requiring the parties to account for revenues derived from disputed areas. We anticipate, however, that such a decree can be formulated by agreement once the Court has rendered its decision. Otherwise, a reference to the Special Master for that limited purpose may be appropriate. See Report, p. 53.

It is also true that, because of the ambulatory character of the coast, further proceedings at some future time may become necessary. See Report, pp. 53–54. But, on the side of the United States at least, it is hoped that the parties will take up the Court's suggestion that the line now fixed will be "frozen" for a substantial period by agreement. See 394 U.S. 11, 34. To that end, we invite the Court to make clear, once again, that such a binding agreement is appropriate and, so far as the Federal Constitution is concerned, requires no legislative approval.

that the parties might disagree on the application of that definition to the Louisiana coast, the Court reserved jurisdiction "to entertain such further proceedings, enter such orders and issue such writs as may * * * be deemed necessary or advisable to give proper force and effect to this decree." 364 U.S. at 504.

As it turned out, no agreement was reached and, by cross-motions filed in 1968, both parties requested a supplemental decree specifically designating the seaward limit of the lands under the Gulf of Mexico owned by Louisiana. After oral argument, the Court rendered an opinion resolving many of the issues involved. *United States* v. *Louisiana,* 394 U.S. 11. Most importantly, the principles of the intervening decision in *United States* v. *California,* 381 U.S. 139, were held applicable to the present controversy, so that the delimitation of "inland water" here, as there, is controlled by the rules announced in the international Convention on the Territorial Sea and the Contiguous Zone, T.I.A.S. No. 5639, 15 U.S.T. (Pt. 2) 1606. Applying those rules, the Court itself rejected Louisiana's claim based on the so-called "Coast Guard line" and effectively settled the boundary between State and federal submerged lands along much of the coast. This made possible the subsequent entry of decrees removing large areas from dispute. See 404 U.S. 388; 409 U.S. 17.

There remained, however, several issues with respect to which an evidentiary hearing was deemed appropriate. Most of these concerned water areas which

Louisiana claimed as "inland," either because they were said to qualify as "juridical bays" under the international Convention,[2] or on the ground that they were "historic bays" exempted from the strict criteria of the Convention.[3] To resolve those questions, as well as other relatively minor factual disputes,[4] the Court appointed a Special Master. 395 U.S. 901.

In a joint Pretrial Statement dated December 5, 1969 (Report, pp. 55–62),[5] counsel for both parties set out the issues which they believed to be before the Special Master in this case.[6] Thereafter, the Special

[2] For the Court's convenience, we have printed, as Appendix A to this memorandum (pp. 33–34, *infra*), the full text of Article 7 of the Convention which governs juridical bays.

[3] In either case, the 3-mile belt granted to the State by the Submerged Lands Act would be measured from the closing line of the "bay," which represents the "seaward limit of inland waters." In some areas (as with respect to East Bay), the parties disagree as to whether *any* bay affecting the Submerged Lands Act grant exists. More often, the dispute involves the location of the bay closing line.

[4] Primarily, these factual issues concern the existence or nonexistence of certain mudlumps, low-tide elevations, or spoil banks, during relevant periods. See 394 U.S. at 40–41 n. 48.

[5] As the introduction to the Pretrial Statement recited (Report, p. 55), it consisted of three parts, designated "A", "B" and "C". The Master's Report reprints only Part A. Because we shall have occasion to refer to it here and in our Reply Brief, we have printed Part B of the Pretrial Statement as Appendix B (pp. 35–36, *infra*) to this memorandum. Part C has no continuing relevance and is omitted.

[6] By a subsequent Stipulation (Report, p. 62), the Statement was amended. As the hearings progressed, a few additional or subsidiary issues emerged. Except insofar as the Pretrial Statement expressly foreclosed the matter, the parties and the Special Master agreed that these, too, should be resolved in order to avoid a wasteful remand of the case.

Master held a number of hearings. The United States and the State of Louisiana submitted numerous exhibits and examined many witnesses who testified on legal and factual matters relevant to the ultimate location of Louisiana's coast. At the invitation of the Master, both parties submitted exhaustive briefs and presented oral argument on several occasions. The Master has now filed his Report and the Court, on October 15, 1974, directed the filing of any exceptions thereto by November 29.

2. The United States accepts all of the Special Master's conclusions with only the three exceptions already noted. We here address ourselves entirely to those exceptions, deferring argument in support of the balance of the Master's Report until our response to Louisiana's exceptions.[7]

We stress that our exceptions do not challenge factual determinations based on the sifting of massive documentary evidence or the appraisal of witnesses.[8] On the contrary, our principal argument under Points I and III requires no more than the application of

[7] Whether or not the State excepts to all of the Master's conclusions which the United States accepts, we shall address each of those conclusions in our response—if only by adopting the appropriate passage of the Report. On some issues, we shall buttress the Master's conclusions with additional arguments. And, in rare instances, we may support the result on independent grounds, without endorsing all the Master's subsidiary findings or his reasoning. The present exceptions are directed only to *results* we challenge and our failure to except to any finding or statement in the Report should not be understood to imply that we accept it as correct.

[8] Compare, *e.g.*, the Special Master's resolution of the "historic inland water" claim, which accounts for the bulk of the record.

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legal principles already settled by the Court to a physical situation fully revealed on stipulated maps. Except for the maps, no reference to the record is necessary or appropriate to resolve those questions. Nor is the operation one that requires special expertise. The answer turns essentially on visual impression, informed by strict observance of legal criteria.[9]

To be sure, the situation is somewhat different when we challenge the Special Master's finding that certain low-tide elevations existed at relevant times (Point I(B) and Point II). As it happens, however, our quarrel is with the Master's automatic acceptance of the Coast and Geodetic Survey's 1200 series charts for these areas. There is no dispute about what those maps show: our submission is simply that, in the circumstances, they should not be deemed controlling. If we are correct, it is true that reference to the record may become necessary.[10] But we have no reason to believe that there is any disagreement as to what the evidence shows, once it is ruled that the Master's reliance on the 1200 series charts was improper.

[9] So saying, we do not underrate the useful function served by the Special Master. His findings have eliminated many subsidiary issues and have narrowed others. Thus, in East Bay, the Master's determination as to the correct application of the semicircle test reduces the dispute (at least so far as we are concerned) to the propriety of two proposed bay closing lines.

[10] Even here, reference to the record is unnecessary if the Court accepts our submission that, in the circumstances, the special set of 54 maps should have been deemed controlling. See pp. 17–20, *infra*.

ARGUMENT

I

THERE ARE NO LESSER BAYS WITHIN EAST BAY WHICH AFFECT THE EXTENT OF LOUISIANA'S SUBMERGED LANDS ACT RIGHTS

The United States and Louisiana have continually disagreed on the location of the coastline within East Bay. Prior to the Court's 1969 decision, 394 U.S. 11, the State argued that the whole of East Bay was a juridical bay, from the tip of the jetties at South Pass to the tip of the jetties at Southwest Pass. This Court held otherwise, pointing out that the water area "enclosed" by a line connecting the jetties was not sufficiently large to meet the so-called "semicircle test" established by Article 7(2) of the Convention on the Territorial Sea. 394 U.S. at 53–54. In the Special Master proceedings, Louisiana proposed a number of alternative closing lines within East Bay, labelled from A (the most seaward) through D (the most inland). Two of the closing lines, C and D, admittedly enclose enough water to satisfy the semicircle test.[11]

The Special Master found: (1) that prior to December 6, 1969, the area enclosed by Line C constituted a

[11] We fully accept the Special Master's application of the semicircle test. See Report, pp. 29–31. When we speak of "enclosing enough *water* to satisfy the semicircle test," we treat as "water" any islands or low-tide elevations within the indentation, as required by Article 7(3) of the Convention (Appendix A, *infra*, p. 33) and the Master's ruling.

juridical bay; and (2) that, thereafter, Line D represented the seaward limit of inland waters in East Bay. Report, pp. 34–35. December 6, 1969, is the date after which the land formation referred to as "Cow Horn Island"—the eastern terminus of Closing Line C—no longer appeared on large-scale nautical charts of East Bay issued by the federal government (the Coast and Geodetic Survey's 1200 series charts).

In order to reach the conclusion that Lines C and D enclosed juridical bays for periods relevant to this litigation the Special Master found that those areas, besides satisfying the semicircle test, met the other requirements of Article 7 of the Convention and that Cow Horn Island actually existed above mean low water. We challenge both propositions.

A. LOUISIANA'S PROPOSED CLOSING LINES C AND D DO NOT ENCLOSE JURIDICAL BAYS

As we have noted, this Court expressly held in 1969 that the entirety of East Bay is not a juridical bay under the Convention on the Territorial Sea and the Contiguous Zone because it does not contain enough water area to meet the semicircle test requirement of Article 7(2). 394 U.S. at 53. But that was not the only ruling relevant to East Bay. Responding to the State's proffer of another closing line which met that test, the Court said: "We cannot accept Louisiana's argument that an indentation which satisfies the semicircle test *ipso facto* qualifies as a bay under the Convention." *Id.* at 54. Without foreclosing the possibility that a lesser bay existed, the Court stressed that no such finding would be justified unless all the other

criteria of Article 7 were met: "'a well-marked indentation' with identifiable headlands which enclose 'landlocked waters.'"[12] *Ibid.* We submit that injunction has not been followed.

The Special Master, we believe, reached his conclusion by a path which begins at the wrong place. Although not expressly articulated, we think it fair to say that implicit in the Master's treatment of East Bay are three assumptions: (1) that there is, almost certainly, a true bay *somewhere* within East Bay which affects the Submerged Lands Act grant, the task being to define it; (2) that the natural entrance points of that bay need not be apparent when one looks at the map; and (3) that any body of water that satisfies the semicircle test is presumptively a juridical bay. We challenge each of these premises, and suggest that the Master's determination cannot survive when those false supports are removed.

1. The reality is that, unless East Bay as a whole qualifies (which it does not, as the Court has already held), there is *no* smaller juridical bay within the

[12] To be sure, the Court also noted that East Bay (like all other areas claimed as historic inland waters) is an "indentation sufficiently resembling [a] bay" that it would "clearly qualify under Article 7(6) if historic title can be proved." 394 U.S. at 75 n. 100. But, the Master to the contrary notwithstanding (see Report, p. 28), that has no bearing here. Indeed, Article 7(6) (Appendix A, *infra*, p. 34) expressly exempts "historic bays" from the criteria established in that Article for juridical bays, as the Court repeatedly noted. See 394 U.S. at 53 n. 72, 74, 75 n. 100. Accordingly, the finding that East Bay is sufficiently bay-like to qualify as an "historic bay" says nothing whatever on the issue whether any of the tests announced in Article 7(2) are satisfied.

area (except only minor "pocket" bays which are so situated that they do not affect the boundary of the 3-mile grant).[13] That is, after all, what one would expect. East Bay is essentially a triangle whose "height" (or "depth") is barely more than half the length of its wide base opening to the sea. No body of water so shaped can ever qualify as a bay, if only because it cannot meet the semicircle test. Nor can *any more "inland" part* of such a triangle satisfy the semicircle test.[14] It is therefore *surprising* to find that any line can be drawn in East Bay so as to "enclose" enough water to meet the test. Such a closing line is immediately suspect.[15]

[13] The most important of these "pocket bays"—numbered from 1 through 5—are indicated on Drawing 1, following p. 14, *infra*. They do not affect the 3-mile grant because arcs swung from points on the shore, or the territorial sea of islands or low-tide elevations seaward of the "pocket bays," produce a more seaward 3-mile line than would be the case if the closing lines of these bays were used as a baseline. There is no dispute between the parties on this point.

[14] The area of a triangle will not equal that of a semicircle drawn on the same "base" (or diameter) unless the "height" or "altitude" of the triangle is well over three-quarters the length of the "base." The "base" of the East Bay triangle is approximately 16 nautical miles; its "height" is just over 8 nautical miles. Nor will a triangle satisfy the semicircle test if the angle opposite the baseline exceeds 65°. Accordingly, since the northern angle of the East Bay triangle is substantially more obtuse, no smaller "interior" triangle will satisfy the formula.

[15] We note that the argument presented here is *not* the same as that rejected by the Master at pages 27 and 28 of his Report. The proposition there discussed was that an indentation which is shaped like an inverted V does not qualify as a bay, *even if it meets the semicircle test*, because it cannot be deemed "landlocked." We adhere to that view, but it should not be confused with the narrower point urged here which depends on the uncontrovertible premise that *some* triangular bodies of water—those which are very much wider than high—cannot satisfy the semicircle test.

When we examine the lines in question, we see how artificially contrived they are. They are in fact nothing more than impermissible fallback lines that work mathematically under the semicircle test only because they capture discrete little pocket bays that are *seaward* of the line—a very odd basis for defining a bay. But, as we have seen, that is not enough. To qualify as a true bay, the body of water behind the closing line also must be "a well-marked indentation, with identifiable headlands which enclose landlocked waters." Those criteria are not met here.

2. The arbitrariness of Closing Lines C and D is starkly revealed if one begins with an unmarked map of East Bay and asks oneself "where does the bay begin?" See Drawing 1, following p. 14, *infra*. If there is a bay at all, it ought to be visually obvious. One would look for the natural entrance points which help to "enclose" the "landlocked" waters of the bay and separate it from the open sea. We search the map in vain: No such "headlands" appear because, on both sides of the triangle, the coast is essentially straight.[16] Conceivably, some might be tempted to choose

[16] Dr. Robert Hodgson, Geographer of the Department of State, made the point forcibly (Tr. p. 5373):

> The shape of the feature [East Bay] which is contained within these two passes is essentially that of a triangle in which the base, that portion toward the sea, is exceedingly wide, it is very open.
>
> There is no significant geographical feature existent up to the point where I have drawn the line to separate the waters of this feature from the main waters of the Gulf.

The "line" Dr. Hodgson marked merely defines what we have

the tips of the jetties as the natural entrance points of the bay, albeit their direction, at least on the west side, does not help "enclose" any body of water. But, at all events, once that selection is rejected, it is impossible to define visually the true entrances of a bay. Certainly, no non-mathematician would see that the points on which Closing Lines C and D are anchored define the beginning of a bay, nor conclude that the waters inland of those lines are any more "landlocked" than the waters immediately seaward. See Drawing 2, following p. 16, *infra*.

What we have sought to demonstrate is that Closing Lines C and D are not—as they should be—lines which *apparently* separate an inland bay from the open sea and which survive when tested mathematically. On the contrary, the operation was done in reverse: these lines were chosen because, by virtue of a geographical "fluke", they meet the semicircle test; and, afterwards, they were sought to be justified as marking the limits of a natural bay. That procedure is inadmissible. One ought to be able to see the bay on the map at first glance, as the Convention itself makes clear.

Indeed, the *first* condition that must be satisfied under Article 7(2) before a body of water can be deemed a putative bay is that it be "a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked

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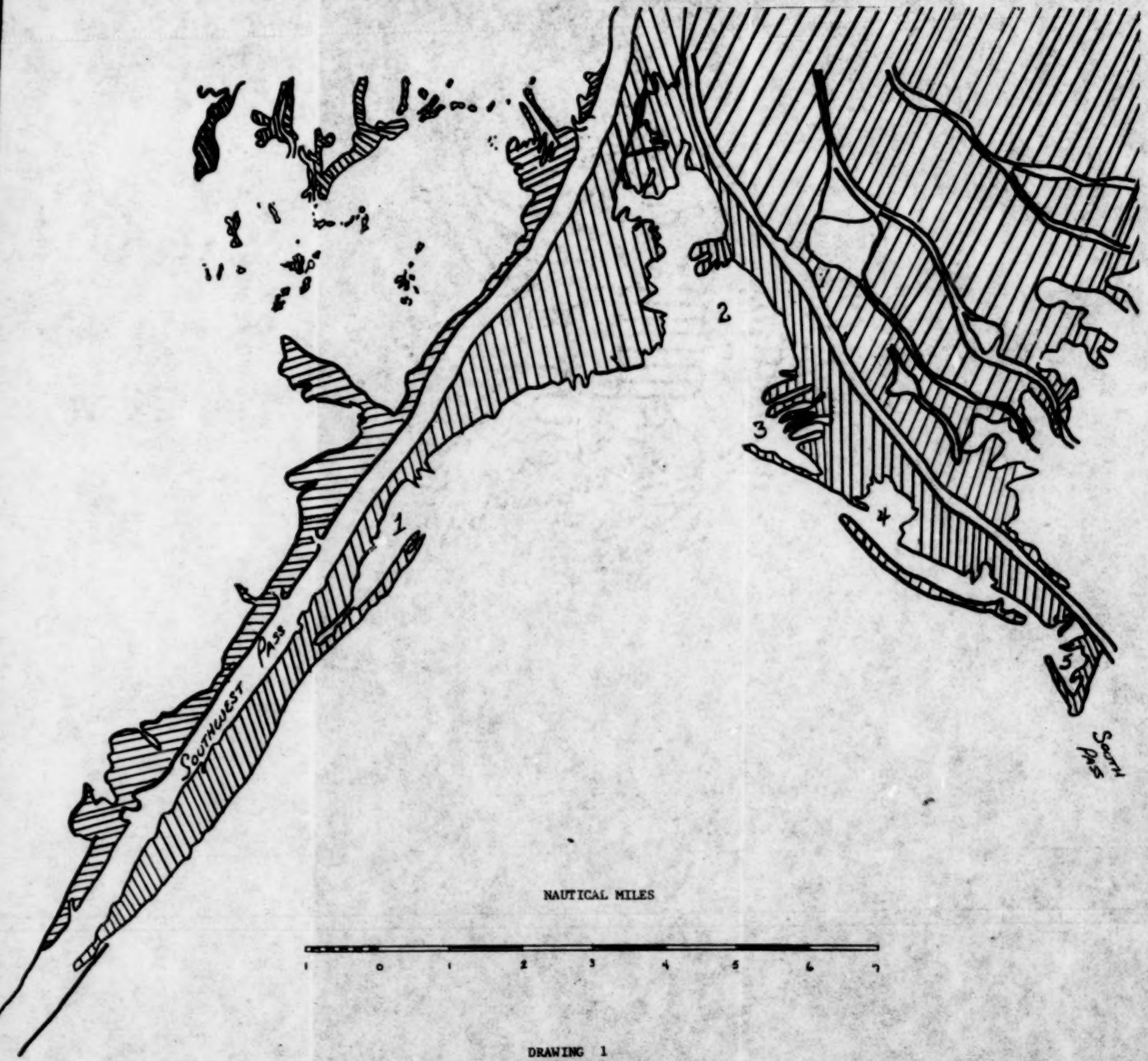
labelled Pocket Bay 2, at the very north end of East Bay. See Drawing 1, opposite. As already noted (n. 13, *supra*), it does not affect the 3-mile limit.



NAUTICAL MILES

1 0 1 2 3 4 5 6 7

DRAWING 1
(EAST BAY)

waters * * *."[17] The semicircle test is an *additional* criterion, imposed as a second check. Until and unless one has isolated a landlocked body of water on the chart, there is no occasion to resort to the planimeter to apply the semicircle test.

3. If we are correct that no true bay less than the whole of East Bay (except minor pocket bays that have no practical effect) is visible to the eye, that is an amply sufficient ground for rejecting Closing Lines C and D—or any other bay closing line inside East Bay. But we reach the same result even if we follow the kind of *ex post facto* analysis suggested by the Special Master's Report and focus only on the lines actually proposed.

The most obvious objection is that the anchor points for Closing Lines C and D do not qualify as "headlands" of a bay. They are nothing more than slight protuberances on an otherwise straight coast. They do not substantially depart from the general contour of the shore.[18] To be sure, the points selected may be headlands of small pocket bays along the levee of

[17] Indeed, the history of the Convention clearly indicates rejection of the semicircle test as the primary definition of a juridical bay. See 1 *Yearbook of the International Law Commission* (1955), pp. 206–207, 210–211.

[18] See I Shalowitz, *Shore and Sea Boundaries* (1962), p. 57 n. 57, an authority quoted extensively by Louisiana before the Special Master (La. Opening Brief, Vol. IV, p. 110). Commenting on the *California* case, Mr. Shalowitz wrote: "we can define a headland generally as 'the apex of a salient of the coast; the point of maximum extension of a portion of the land into the water; or a point on the shore at which there is an appreciable change in direction of the general trend of the coast,'" adding, "[t]o consider these protuberances as headlands of a bay, they must bear a definite relationship to the curvature whose status is being determined." See, also, *id.* at 64 n. 77.

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South and Southwest Passes.[19] But they contribute nothing to "enclosing" the main body of water to the north, to help make it "landlocked." Not surprisingly, when we look at the area landward of those lines, we cannot see what divides those waters from the open sea beyond, except the artificial line drawn on the map. We must conclude that the Special Master has too quickly accepted closing lines which were selected only because they satisfy the semicircle test, without properly examining whether their termini qualified as the natural entrance points of a true inland bay.

The argument just concluded, if correct, requires the rejection of both Closing Lines C and D, and, *a fortiori,* of Closing Lines B[1] and C[1] disallowed by the Master himself. See Report, p. 32.[20] Our submission has been that there is no true bay within the area of East Bay which affects the outcome. We now turn to an independent objection, applicable to Closing Line C only: the non-existence of "Cow Horn Island" on which that line is anchored.

B. COW HORN ISLAND DID NOT EXIST AT ANY TIME RELEVANT TO THIS LITIGATION

The eastern terminus of Louisiana's proposed Closing Line C is located on a low-water elevation shown

[19] Thus, the point selected as the western terminus of both Lines C and D is a headland for Pocket Bay 1; the eastern terminus of Line C is a headland for Pocket Bay 4; and the eastern terminus of Line D is a headland for Pocket Bay 3. See Drawing 2, opposite.

[20] These are the only lines proposed that satisfy the semicircle test. See Report, pp. 29–31. We would, however, interpose the same objection to Closing Line A, its variants, and Closing Line B, if they met the semicircle test.

DRAWING 2
(EAST BAY)

near the eastern shore of East Bay on a number of large-scale charts and labelled "Cow Horn Island" by counsel for the State. If that formation did not exist after June 1950,[21] the line has no basis. We submit the Special Master erred in finding that "Cow Horn Island" subsisted beyond 1949.

1. We begin with the omission of "Cow Horn Island" on the set of 54 large-scale maps of the Mississippi River delta prepared for the State of Louisiana and the United States in 1959 for use in this litigation. See Report, p. 32. These maps, constructed at four times the scale of the standard large-scale nautical charts of the Louisiana coast, have been stipulated as accurately depicting most of the coast by both parties.[22] To be sure, for some areas—including this one—the State declined to be bound by these maps and

[21] The critical date for the accounting ultimately required between the parties is June 5, 1950, when the first decision was entered in this litigation. See 340 U.S. 899, 900. While the Submerged Lands Act, 43 U.S.C. 1311(b)(1), forgave any violation of the 1950 decree with respect to the 3-mile belt quitclaimed to the State in 1953, it had no effect on any accounting due for exploitation by State lessees beyond that boundary.

[22] These maps, commonly referred to as the "set of 54 maps" or the "special maps," were before this Court in 1969, were filed with the Special Master at the outset of the present proceedings (see Pretrial Statement, Part B, Appendix B, *infra*, p. 35), and are now part of the record filed with the Court. Although bound in a single volume, the maps are in three groups of 41, 8 and 5 maps respectively, and are accordingly referred to as, *e.g.*, "Map 6 of 41," or "Map 6 of 8", etc. There are three exemplars of the volume in the record, one unmarked, a second showing the submission of the United States as to the correct location of the coastline (U.S. Ex. 389), and a third showing Louisiana's maximum submission (La. Ex. 353).

"reserve[d] the right to show" that the physical situation was different. Pretrial Statement, Part B, ¶(d), Appendix B, *infra,* p. 35. But that does not render the maps valueless; they remain *prima facie* correct, although impeachable by better evidence.

What, then, was the evidence that persuaded the Special Master to depart from the special maps on the issue of the existence of "Cow Horn Island"? It was nothing more than the appearance of "Cow Horn Island" on the less detailed Coast and Geodetic Survey's 1200 series of charts until December 1969. Report, p. 33. This automatic deference to the "official" chart, the Master apparently believed, was compelled by the Convention itself. See Report, p. 24. In our view, that was a wholly unwarranted progression.

Article III of the Convention (Report, p. 24), it is true, specifies that the low-water line, where relevant, shall be that "marked on large-scale charts officially recognized by the coastal State." But that provision is not dispositive here. First, it was always recognized that, in proper cases, such charts could be impeached. See, *e.g.,* 1 *Yearbook of the International Law Commission* (1954), p. 65. Second, it would be a very narrow reading of the Convention to suppose that its drafters meant to prefer the "official" charts when more detailed, more careful, and more current maps were available. And, finally, only the most literal-minded can interpret the Court's ruling that the Convention governs this case to mean that the parties to this domestic controversy are bound by charts published for a wholly different purpose, at

least when better evidence, specifically addressed to the issues in the case, is available. Compare the Court's treatment of "historic inland water," 394 U.S. at 77–78.

The Special Master's approach ignores the reason behind the laborious undertaking that resulted in the special set of 54 maps. Obviously, no such effort was necessary if the parties were content to accept the official 1200 series charts as accurately depicting the Louisiana coast. There were at least three objections to the 1200 series charts: (1) they were not sufficiently large-scale to reflect all necessary detail; (2) in the absence of a re-survey, the new issues of those charts merely reproduced earlier editions (in this case based on information gathered in 1939, Tr. p. 5097); and (3) these charts, in the interest of navigational safety, tended to resolve all close questions by exaggerating the extent of low-water lines, Tr. p. 4951. It was therefore entirely inappropriate to resort to these rejected charts merely because Louisiana declined to stipulate the correctness of the more careful set of 54 maps in the area.

Nor did the stipulation entered into by the parties justify the Special Master's solution. The Pretrial Statement recites that, in certain areas, Plaintiff or Defendant reserves the right to challenge the accuracy of the set of 54 maps, otherwise accepted as final for the purpose of this litigation. The United States always assumed that, to prevail, it must demonstrate the error on the special map by *better* evidence. See Pretrial Statement, Part B, ¶¶ (a) and (b), Appendix B, *infra,* p. 35. To be sure, Louisiana,

in two instances (*id.* at ¶¶ (c) and (d), Appendix B, *infra,* p. 35), reserved the point that the official 1200 series charts "must be given effect." But that was never *agreed.* On the contrary, then as now, the United States maintained that the special maps could not be successfully attacked simply by showing that the 1200 series charts depicted a different coastline. Indeed, it has always seemed to us plain that the Court intended the resolution of geographical disputes by resort to the *best* evidence—not an arbitrary reference to official charts. See 394 U.S. at 40–41 n. 48. And see Report, pp. 24–25.

2. We have said enough to invalidate the Special Master's reliance on the 1200 series charts as establishing the existence of "Cow Horn Island" until December 1969. The question remains, however, whether there was any independent basis for that conclusion. There was none. One witness for the State, it is true, testified that, while flying over East Bay in the 1950s, he saw birds standing on "Cow Horn Island." But that evidence, wholly unrelated to tidal datum and presumably reciting an observation during abnormally low water, is wholly unsatisfactory, as the Special Master concluded. See Report, p. 33. It follows, we submit, that the existence of "Cow Horn Island" for any relevant period was never proved. Nor is that all. In the event, there was persuasive factual evidence corroborating the indication of the set of 54 maps.

Mr. Bennett G. Jones testified at great length about how the 1959 maps were constructed.[23] He fully described the procedures involved in the aerial survey, which produced the photography used for the mapping, and the subsequent field survey which was conducted to verify the aerial work. Mr. Jones explained that the survey party, which he led, knew the purpose of the project and was aware of the importance of accurately locating the low-water line. He noted that the party was familiar with Coast and Geodetic Survey's chart 1272, indeed used it for navigation while in the area, and as a result paid particular attention to differences between the low-water line as shown on chart 1272 and the actual line as it existed in 1959. In this regard, Mr. Jones testified that "a long narrow low water spit" [Cow Horn Island], appearing on chart 1272, did not appear in the 1959 aerial photos. Tr. p. 4430.

Mr. Jones also reviewed numerous aerial photographs of East Bay which had been taken between 1949 and 1959. United States Exhibits 213–226. He testified that he considered these to be good photographs for his purposes and, after taking known tidal data into account, was able to give his opinion that the low-tide elevation near the western levee of South Pass [Cow Horn Island] did not exist between 1949 and 1959. Tr. p. 4447.

This evidence, we believe, is dispositive. The fact is that "Cow Horn Island" has not existed above mean

[23] Mr. Jones was employed by the United States Coast and Geodetic Survey from 1925 until 1969. During most of that time he was engaged in photo interpretation work for the production of nautical charts. Tr. pp. 4353–4364.

low water since 1949. Accordingly, there is no basis for Closing Line C.

II

THE EXTENSIVE LOW-TIDE ELEVATIONS BETWEEN PASS DU BOIS AND PASS TANTE PHINE DID NOT EXIST AT ANY TIME RELEVANT TO THIS LITIGATION

Our second exception relates to the location of the low-water line between Pass du Bois and Pass Tante Phine on the western side of the Mississippi River Delta. The difference between the parties is illustrated on Drawing 3, opposite. It will be seen that the State extends the coastline seaward by virtue of extensive low-tide elevations (dark areas), the existence of which is disputed by the United States.

Here, as in the case of Cow Horn Island, Louisiana did not accept the low-water line as shown on the special set of 54 maps. See Pretrial Statement, Part B, ¶ (c), Appendix B, *infra*, p. 35. Accordingly, the State was free to show that, contrary to the indication of those maps, substantial low-tide elevations extending outward from the coast existed for relevant periods. But, in the event, the State produced no evidence whatever; it merely pointed out that the Coast and Geodetic Survey 1200 series chart for the area indicated such low-tide elevations until the December 1969 edition. On that basis alone, the Special Master accepted Louisiana's proposed baseline. See Report, p. 47, ¶ (c).[24] We submit this was plain error.

[24] The Master's summary conclusion does not reveal his reasoning. But the sequence of events indicates that he followed the same course as with respect to Cow Horn Island. When, in

DRAWING 3

We have already suggested why, in our view, the Master could not properly resolve any dispute as to physical facts by simply resorting to the 1200 series charts. In summary, that short-cut procedure is inappropriate because it makes nonsense of the expensive and careful undertaking involved in producing the more detailed set of 54 maps, and is, moreover, at odds with the Court's 1969 opinion which required the parties to produce factual evidence in such cases. Our submission is that a party challenging any geographic fact depicted on the special set of 54 maps must prove the true situation by *better* evidence—not a mere reference to the 1200 series charts which were early rejected as not sufficiently exact. It follows that, in the circumstances—Louisiana having offered no contradictory evidence whatever—the set of 54 maps ought to control.

As it happens, however, the United States introduced further evidence. Indeed, uncontradicted testimony showed: (1) that the disputed low-tide elevations were carried on successive editions of Chart 1272 until the end of 1969 solely on the basis of a 1936 survey (Tr. p. 4670); (2) that aerial photographs, analyzed by an expert in connection with weather,

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the last weeks of the proceedings, the Master indicated that he would make no determination with respect to this area, the United States proposed a finding based on the set of 54 maps, and, thereafter, Louisiana proposed the finding based on the 1200 series chart. It is not clear whether, at that last moment, the Master focused on the independent evidence submitted by the United States and the State's failure to produce any evidence. Following his own guidelines, it would seem the Master should have gone behind the 1200 series chart for this area. See Report, pp. 24–25.

tide and river information, negated the existence of these low-tide elevations between 1949 and 1959 (Tr. pp. 4446–4448); and (3) that the disputed formations still had not reappeared above mean low water in 1970 (U.S. Ex. 200, Vol. 2; Tr. pp. 4510, 4673). Accordingly, the Master's rejection of the low-water line shown on Map 7 of 8 of the set of 54 maps was not only without basis; it was contrary to the only evidence in the record.

III

ASCENSION BAY IS NOT AN OVERLARGE BAY

Throughout this litigation Louisiana has contended that the vast water area which washes the Mississippi Delta on the west—labelled by the State "Ascension Bay"—qualifies as an overlarge bay.[25] See Drawing 4, following p. 26, *infra*. The Court considered this area in its 1969 decision, concluding that it meets the semicircle test (394 U.S. at 51–53), but leaving it to the Special Master to determine in the first instance whether the area satisfies the other requirements of a juridical bay: that it be a well marked indentation with headlands, and that the indentation enclose landlocked waters (394 U.S. at 48 n. 64). We submit the

[25] As the Court has had occasion to explain (394 U.S. at 48–49 n. 64), the Convention recognizes that a body of water which satisfies all the criteria of Article 7 may be a bay even though the width of its mouth exceeds 24 miles. In that event, however, the seaward limit of inland water is not a line across the mouth, but a "fallback line" of 24 miles inside the bay, so located as to enclose the maximum area of water. Article 7(5), Appendix A, *infra*, p. 34. We do not quarrel with the Master's location of this fallback line here *if* "Ascension Bay" is indeed a true bay.

Master erred in resolving that issue in the affirmative. See Report, pp. 45–46.

1. Because no obviously "landlocked" waters are revealed on the map, it is important to identify the area which is said to constitute "Ascension Bay." The Special Master was somewhat reluctant to commit himself on this score,[26] presumably because several alternative closing lines would satisfy the semicircle test[27] and the exact boundaries of the bay would not affect the location of the fallback line—the only line that ultimately controls the result. But those are not valid excuses. As this Court expressly held in rejecting Louisiana's alternative closing line for East Bay in 1969, the fallback principle applies *only with respect to a true bay* (394 U.S. at 53–54), and a body of water that satisfies the semicircle test does not, on that ground alone, qualify as a bay (394 U.S. at 54). It was, therefore, essential, here as elsewhere, first to establish that there exists a "well-marked indentation" with identifiable headlands which enclose "land-

[26] The Master initially made no determination whatever as to the entrance points of "Ascension Bay" and the finding in the final Report was included only after the United States suggested the necessity of fixing the boundaries of "Ascension Bay". See *Memorandum of the United States Commenting on the Special Master's Draft Report*, pp. 13–14. The Master now defines "Ascension Bay" as the area enclosed by a line running from the tip of a jetty at Belle Pass to the tip of the jetty at Southwest Pass, but adds that other unspecified closing lines "could also be drawn" or "could also be selected." Report, pp. 45, 46.

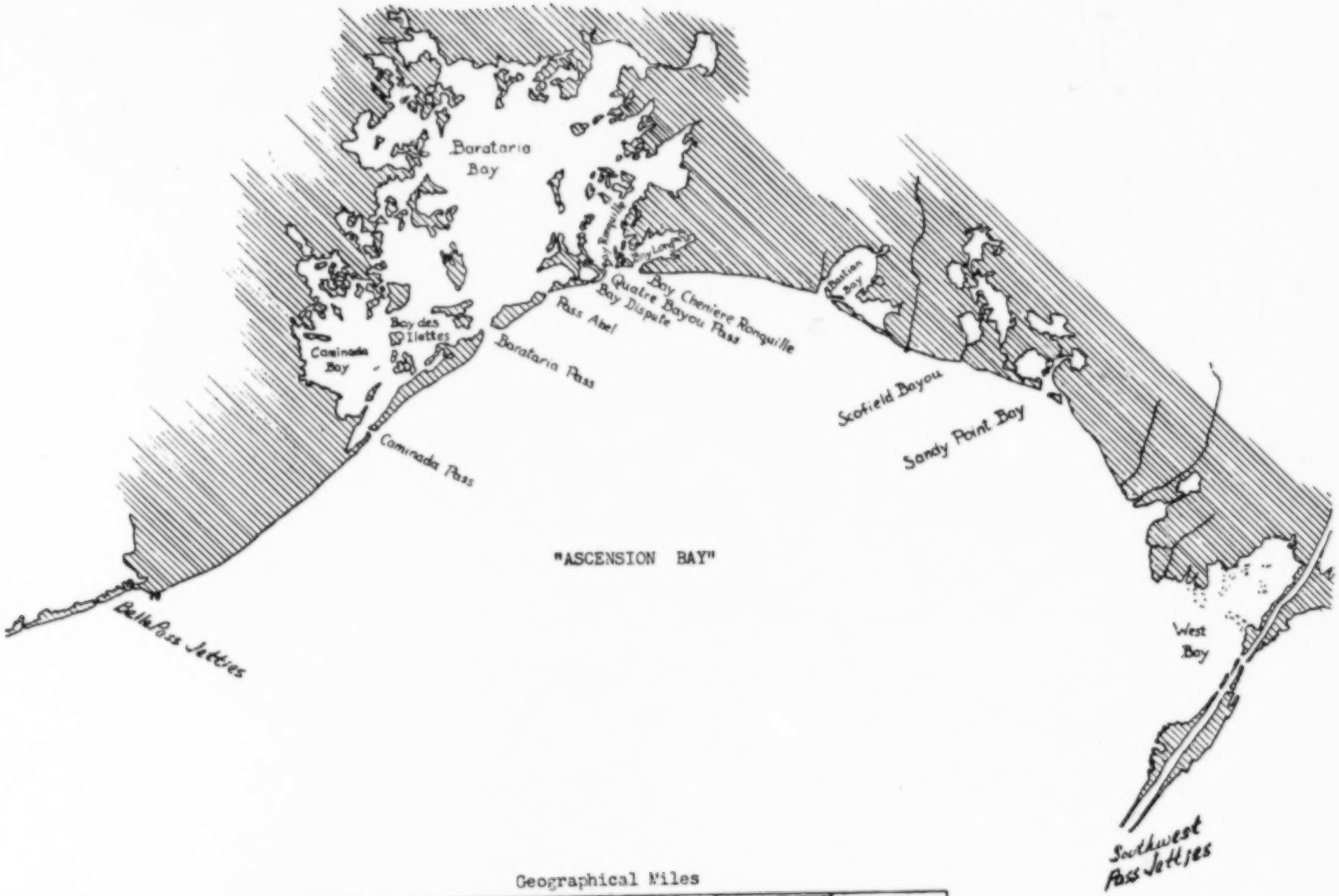
[27] This is only by virtue of the Court's ruling that the Caminada-Barataria Bay complex, as well as the islands screening those bays, must be included as part of "Ascension Bay" for the purpose of applying the semicircle test. 394 U.S. at 52–53.

locked waters." Yet, no such conclusion has meaning except as related to a defined area: how can one say that an indentation is "well-marked," that it has "identifiable" headlands, and that the included waters are "landlocked," without knowing the boundaries of the alleged bay?

So saying, we do not mean to suggest that the Special Master should have approached the issue by confining his attention to any closing line or lines proposed by the State. On the contrary, as with East Bay (*supra,* pp. 13–15), we believe the best procedure for judging whether any bay exists is first to study an unmarked map of the area. Indeed, we invite the Court to perform that operation for itself by referring to Drawing 4, opposite. If the Court agrees with us that no identifiable bay is revealed by such an examination (except, of course, the Caminada Bay-Barataria Bay complex and West Bay),[28] that should be an end of the matter. On the other hand, however, it is clearly improper to decide the issue in favor of Louisiana on the ground that there is a true bay *somewhere* in the general area—never mind precisely where it begins.[29]

[28] Although disagreeing with the State as to the proper closing lines for those bays, the United States has always acknowledged that the named bays qualify. The Court's ruling that the waters of the Caminada-Barataria Bay complex may be deemed part of "Ascension Bay", and the screening islands treated as water, of course applies only if "Ascension Bay" is a true bay. See 394 U.S. at 48–50 n. 64, 58–59 n. 79.

[29] To be sure, because the fall-back line ultimately controls, it is not necessary, in the case of an overlarge bay, to be *quite* as precise. Thus, quibbles about the exact location of the terminus of the closing line on a particular headland need not be resolved. But the headland itself must be identified.



"ASCENSION BAY"

DRAWING 4

Accordingly, we look to see what might be deemed arguable entrance points for "Ascension Bay." Our own inspection of the map suggests only two remotely bay-like areas, one defined by a closing line beginning (on the west) at the Belle Pass Jetty and ending at the tip of the northwestern jetty of Southwest Pass, the other defined by a line between the western headland of Caminada Pass and the same Southwest Pass jetty. See Drawing 5, following p. 28 (first map), *infra*. Although the Special Master expressly mentioned only the first of those alternatives,[30] we assume he may have accepted the second closing line as one that "could also be drawn," and we therefore consider both.

2. The Special Master's conclusion that "Ascension Bay" qualifies as a true bay—the semicircle test aside—is explained in the Report by the following three sentences only (p. 45):

> Certainly its waters are landlocked, or, as sometimes described, ***Inter Fauces Terrai,*** within well marked natural entrance points. This is supported by the ratio of its depth of penetration to the width of its mouth, for it is almost perfectly semicircular in shape, the classic form of a bay. In this respect, it bears a startling resemblance to Monterey Bay, which was held to be a true bay in the California case.

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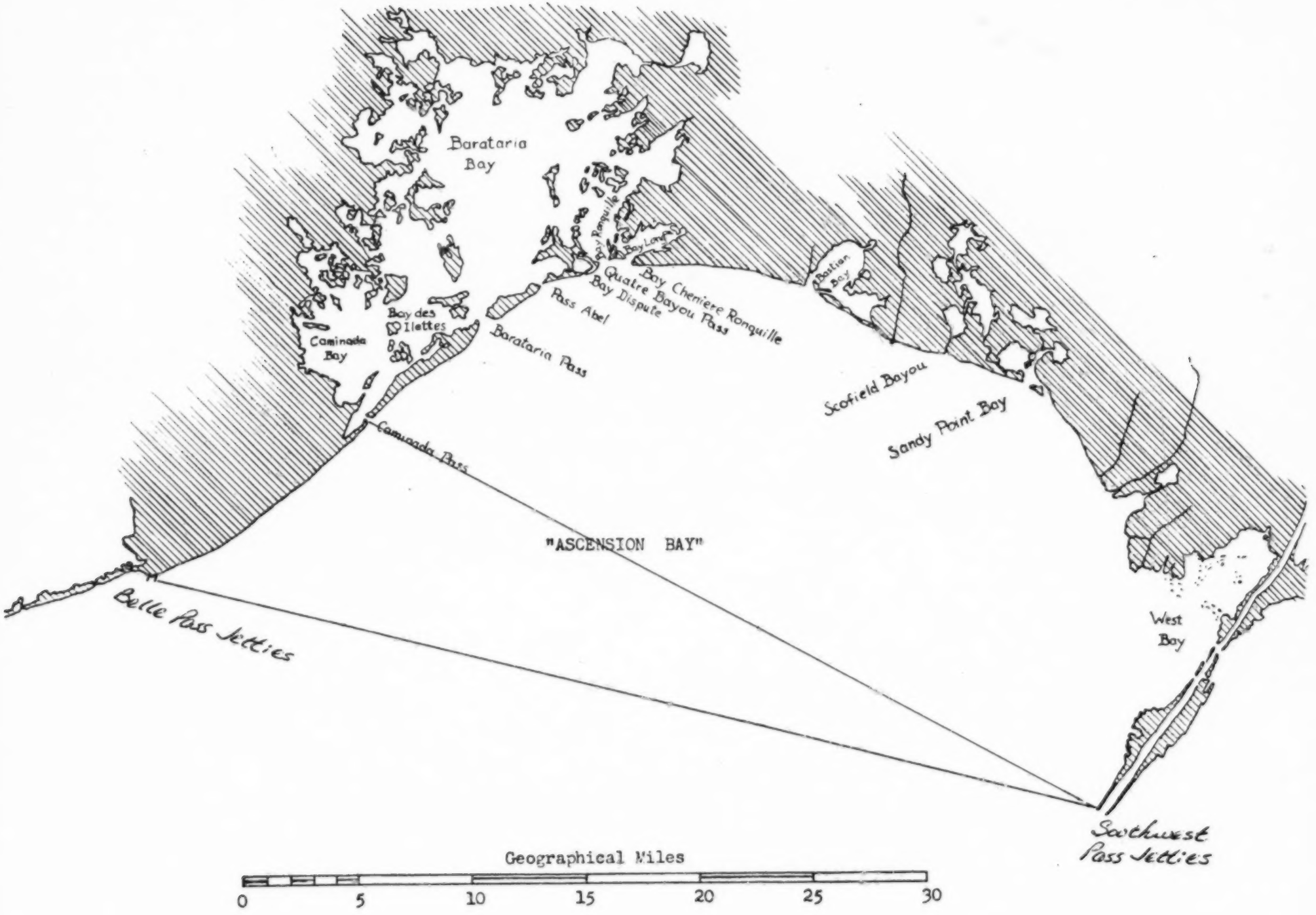
[30] The Special Master twice refers to the "tip of the *east* jetty at Southwest Pass" as the eastern headland of "Ascension Bay". Report, pp. 45, 46. We assume this was a slip of the pen and that he meant the "*west*" or "northwest" jetty of Southwest Pass.

We challenge both the first and last sentences, and suggest that the intervening statement, if true, does not support the result.

a. We begin with the assertion that "Ascension Bay" is "almost perfectly semicircular in shape." That is something of an exaggeration. Indeed, no matter what closing line one uses, a semicircle drawn on that base very substantially invades the mainland, as Drawing 6, opposite (second map), demonstrates. The basic shape of the claimed bay is an appreciably shallower curve. It satisfies the *semicircle test* only because, in addition to the pocket of West Bay, the Court has held that waters of the Caminada-Barataria Bay complex, as well as the islands screening those bays, may be included. But, even if "Ascension Bay" were truly an "almost perfect semicircle", that would lend little weight to the claim.

The truth is that a perfect semicircle is *not* "the classic form of a bay." On the contrary, the classic bay is shaped more like a C, with an interior width greater than the length of its mouth, or like a U, with a depth greater than the width of the mouth. The C-shape is the characteristic of Monterey Bay,[31] relied on by the Master, and of Hawke Bay. New Zealand,

[31] Monterey Bay is well illustrated in an appendix to the opinion of Mr. Justice Black, dissenting, in *United States* v. *California*, *supra*, 381 U.S. following p. 213. As indicated there, the mouth of Monterey Bay is only some 19 miles (as compared to 42 miles for "Ascension Bay"), while its maximum interior width, behind the headlands, is substantially greater. The only feature it shares with "Ascension Bay" is a general circular contour with a depth of penetration slightly less than half the length of the mouth.


Barataria Bay
Bay Ronquille
Bay Long
Bay Cheniere Ronquille
Quatre Bayou Pass
Bay Dispute
Pass Abel
Barataria Pass
Bay des Ilettes
Caminada Bay
Caminada Pass
Batian Bay
Scofield Bayou
Sandy Point Bay
"ASCENSION BAY"
Belle Pass Jetties
West Bay
Southwest Pass Jetties
Geographical Miles
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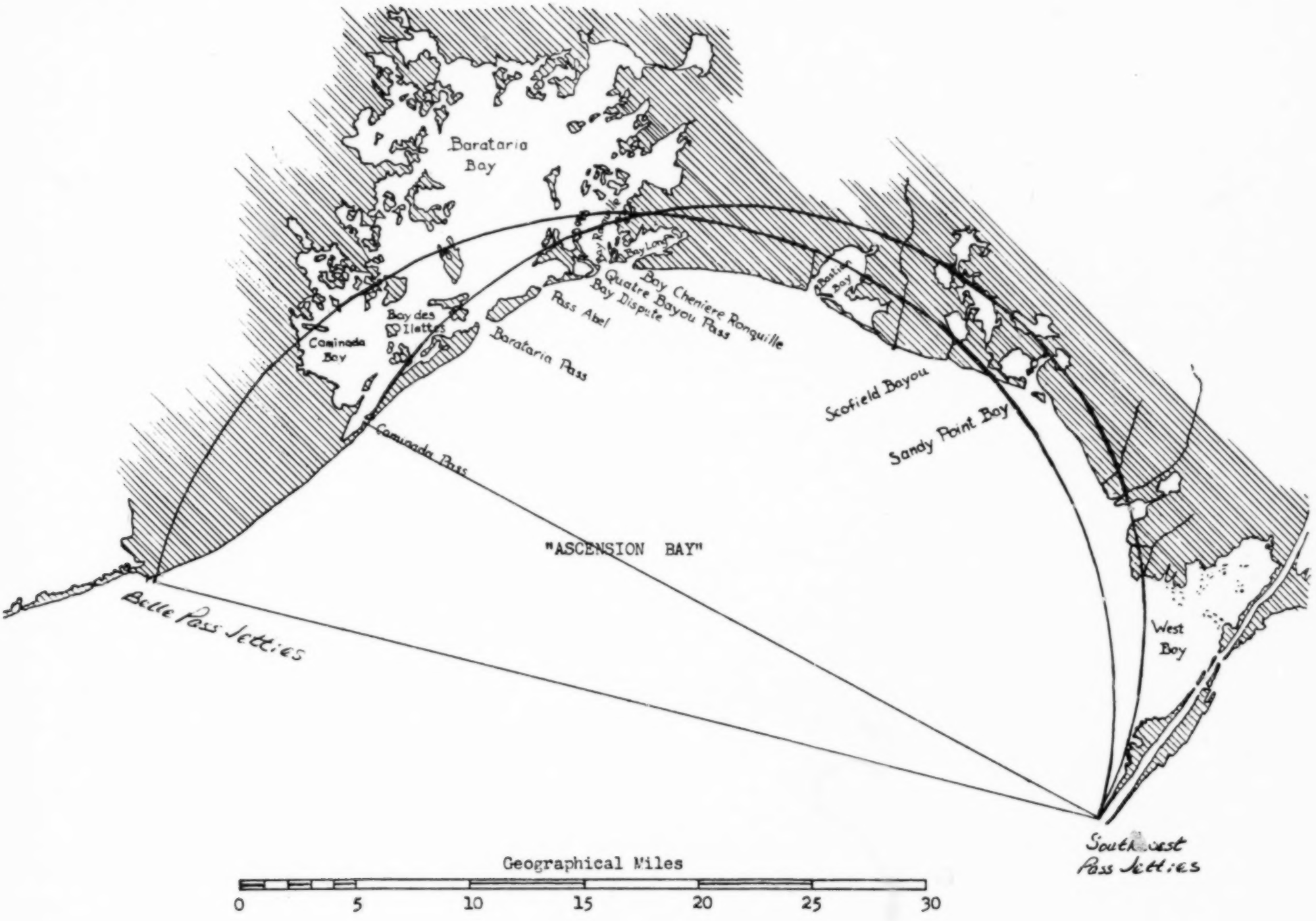
DRAWING 5


Barataria Bay
Bay des Ilettes
Caminada Bay
Barataria Pass
Pass Abel
Quatre Bayou Pass
Bay Dispute
Bay Cheniere Ronquille
Bastian Bay
Scofield Bayou
Sandy Point Bay
Caminada Pass
"ASCENSION BAY"
Belle Pass Jetties
West Bay
Southwest Pass Jetties
Geographical Miles
0
5
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DRAWING 6

invoked by Louisiana; the U-shaped bay is typified by Mobile Bay, Alabama and Cape Cod Bay, Massachusetts. Such formations are more bay-like because they are more evidently "landlocked" than a mere semicircle. Indeed, it is doubtful if any perfectly semicircular area would qualify as a "well-marked indentation" enclosing "landlocked waters" without some additional feature, such as pinched headlands. See Tr. p. 5380.

b. At all events, "Ascension Bay"—the Master to the contrary notwithstanding—has no "well-marked entrance point" on the west.[32] Unlike even a perfect semicircle which would begin with a definite departure from the general direction of the coast, the suggested western termini for the "Ascension Bay" closing line offer no forewarning that we are entering a bay. To be sure, the Belle Pass jetties protrude slightly from the shore, but, once we have passed them, the coast curves outward, not inward as one would expect. Nor does the western headland of Caminada Pass give the slightest clue that a large bay to the *south* is ahead. That promontory does not deviate from the general contour of the shore; it merely announces the entrance of a bay to the *north* (Caminada Bay). The plain fact is that these landmarks were chosen to define the western boundary of "Ascension Bay" for want of anything better. Neither qualifies as a "headland" or "natural entrance point."

c. In this respect, the situation here is so obviously different from the very pronounced "pinched" head-

[32] We accept that, on the east, the Southwest Pass jetty more nearly qualifies as a "natural entrance point," albeit we believe it marks only the beginning of West Bay, not of "Ascension Bay."

lands defining Monterey Bay that we cannot understand the Master's statement that "the resemblance is startling." There, the entrances to the bay were as clear as one could wish, pointing toward each other like pincers. Here, fixing the western boundary of the bay is such an arbitrary task that everyone is hesitant to risk a selection. The answer is that "Ascension Bay" is an artificial construction; in nature, it does not exist.

3. In conclusion, we stress a further objection to "Ascension Bay", related to its abnormal size. As we have noted, we do not believe "Ascension Bay" would satisfy the criteria of Article 7 even if, with the same configuration, it comprised a very much smaller area. But, that is all the more difficult, we submit, when it is remembered that we are considering a body of water with a mouth some 42 miles wide—in contrast to Monterey Bay with only a 19-mile mouth.

The Convention, it is true, recognizes overlarge bays without expressly imposing additional tests. But that is not dispositive. Presumably, everyone would agree that, at some point, the rules of Article 7 cease to apply because the water body considered has *too large* an opening to be considered a "bay," regardless of its "bay-like" configuration. That would include areas which geographers term "gulfs"—such as the Gulf of California and the Gulf of Campeche off the Mexican coast, and, indeed, the Gulf of Mexico itself. Also beyond the reach of Article 7 are bodies of water conventionally labeled "bays" on maps but far too large

to be so treated—for instance, the Bay of Biscay or the Bay of Bengal, both of which would easily satisfy the semicircle test." We do not suggest that "Ascension Bay" is in this category. Yet, in our view, it is significant that we are dealing with an area which has an opening to the sea so much greater than the normal 24-mile maximum.

What we suggest is that, in such a case, the criteria of Article 7 should be more clearly satisfied. After all, the underlying principle is that a bay should be recognizable to the mariner as *inland* water. The wider its mouth, therefore, the more important other features that identify the area as a bay. At least once we pass the 24-mile limit, it is reasonable to expect plainly identifiable headlands and other indications that confirm the "landlocked" character of the area. See the testimony of Dr. Robert Hodgson, the Geographer of the State Department, Tr. pp. 5318, 5379–5384. Thus, one may concede that Hawke Bay in New Zealand, despite the comparable size of its mouth, is a true bay because of its very pronounced pinched headlands. But it would be impossible to make the same claim for "Ascension Bay."

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[33] We recognize that Article 7, by its own terms (Art. 7(1)), "relates only to bays the coasts of which belong to a single [national] State." But the fact that some of the water bodies listed wash the shores of several nations does not detract from our point. Thus, the Gulf of Mexico—although literally satisfying all the tests of Article 7—would not qualify as an overlarge bay even if all the countries bordering it were united into a single nation.

CONCLUSION

For the foregoing reasons, the Special Master's determinations with respect to East Bay, the specified low-tide elevations near Pass du Bois, and "Ascension Bay" should be rejected in favor of the submission of the United States for these areas, and, in all other respects, his Report should be confirmed.

Respectfully submitted.

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November 1974.

APPENDIX A

Article 7 of the Convention on the Territorial Sea and the Contiguous Zone, T.I.A.S. No. 5639, 15 U.S.T. (Pt. 2) 1606 (1958), provides:

> 1. This article relates only to bays the coasts of which belong to a single State.
>
> 2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.
>
> 3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.
>
> 4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

APPENDIX B

Part B of the Joint Pretrial Statement filed with the Special Master on December 5, 1969, provides:

> For the purposes of the present cross motions for entry of a second supplemental decree as to the State of Louisiana, the parties agree to accept the set of 54 maps filed with the Special Master as correct representations of the present high- and low-water lines, with the following exceptions:
>
> (a) The United States reserves the right to show that the spoil bank shown on Map 8 of 8 as extending westward from the northern headland of Pass Tante Phine has ceased to be above the level of mean low water;
>
> (b) The United States reserves the right to show that the mean low-water line west of Sandy Point Bay between 89°30′ W. and 89° 32′ W. differs from that shown on May 8 of 41;
>
> (c) Louisiana reserves the right to show that in the area from Pass Tante Phine running southerly to the vicinity of the mouth of Pass du Bois, in addition to the low-water lines reflected on Map 8 of 8, there are more seaward mean low-water lines marked on large scale charts officially recognized by the coastal state, which must be given effect in delimiting Louisiana's coast line;
>
> (d) Louisiana reserves the right to show that in the area of East Bay, seaward of the mean low-water line reflected on Map 4 of 8, in addition to said mean low-water line there is an additional mean low-water line configuration which is marked on official large scale charts officially recognized by the United States, and which should be given full effect by the Master;

(e) Louisiana reserves the right to show that islands or low-tide elevations exist south of the mouth of South Pass that were not reflected on Map 4 of 8;

(f) It is agreed that the y coordinate of the mudlump east of Pass a Loutre, shown on Map 2 of 8, La. Ex. 119 p. 9, as x=2,754,100, y=189,915, should be y=186,915.

This agreement to accept as correct the water lines shown on the set of 54 maps does not preclude the parties from introducing evidence, not inconsistent with those maps, of geological, physical, or other facts, including but not limited to water depths, inland portions of water lines left incomplete on the set of 54 maps, particularly inclusion of tributary waters in measurements for the semicircle test, and conditions that existed prior to the surveys on which the 54 maps were based. Also, the parties may show the history and usage of these areas. Neither will acceptance of the 54 maps for the purpose stated preclude the parties hereafter, on future motions for entry of further supplemental decrees to have only prospective effect, from showing changes from the conditions on the 54 maps. Neither does this agreement imply that the parties accept as correct the methods used in making the 54 maps.

U. S. GOVERNMENT PRINTING OFFICE: 1974

No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,
Defendants.

EXCEPTIONS OF THE STATE OF LOUISIANA TO THE REPORT OF THE SPECIAL MASTER FILED JULY 31, 1974, AND BRIEF IN SUPPORT OF EXCEPTIONS

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SUMMARY

1. Louisiana takes six exceptions. Two relate to failure to recognize as historic bays East Bay, Caillou Bay and other indentations formed by the Mississippi River Delta. The other exceptions relate to juridical inland water claims.

2. The evidence is entirely uncontroverted, except as to a few technical oversights affecting juridical problems. Thus, Louisiana's exceptions almost entirely relate to errors of law, or misapplication of law to reach erroneous ultimate conclusions. The erroneous assumption that acts which may be done in the territorial sea can never prove an historic bay inland water claim, is an example of such an error treated in historic arguments. In the juridical rulings, in addition to many errors of law (e.g. failure to follow the Convention rule to follow the low-water mark in semi-circle test area measurement) there are also several mistaken applications of law. Thus, as to island-headland errors, the Report misinterpreted mere guidelines or factors so as to convert them incorrectly into cumulative strict requirements.

3. In summary of historic waters arguments, the uncontradicted evidence supports Louisiana's claims that all of the Mississippi Delta Bays, including East Bay and Caillou Bay are historic bays. This evidence shows exercise of authority over the controverted waters, continuing over a very long time, with acquiescence of foreign states, far more than for recognized historic bays. The waterbodies are all indentations and bay-like. The acts are therefore sufficient to show an inland claim. Even by the reasoning employed in the Report, many of the acts were sufficient to evidence an inland historic bay claim, but were denied such effect in erroneous ultimate conclusions of the Report. Such acts included: 4 arrests of foreign vessels; an American ambassador appearing in a

British Court in 1806 and making a coastline claim of territory to waters enclosed by river islands along the Louisiana coast; exclusion of foreigners by armed patrols with eye witness testimony on such patrols extending back to and before World War I; requiring foreigners to submit to state licensing and regulation as required for fishing in inland waters; and many other uncontroverted jurisdictional acts reviewed in these historic arguments. Louisiana maintains that these and other actions amounted to such a firm and continuing publicized stance, that they were, in effect, assertions of jurisdiction which the government cannot now deny in this domestic law suit. Misunderstanding or misapplication of law caused the negative conclusions of the Report. In addition, it was considered by the United States that East Bay was a juridical bay to its outermost headlands until at least 1918. It was recognized that the waters of Caillou Bay were inland waters until at least 1968.

4. As to the juridical exceptions, Louisiana argues in support of Exception 3 that all bay requirements for the more outward East Bay closing lines are met as required under the Convention, Article 7. Indeed, the Master agreed, as to all matters except area measurement where he used a method not supported by law. Louisiana's juridical arguments at East Bay are therefore principally directed to the point that the Convention system of area measurement for the semicircle test should be employed, not the more restrictive approach by the Master. The Convention system calls for use of the low-water line. This requires use

of bays within the bay or other tributaries and islands that the Master did not employ. Supplemental arguments are made to further show area measurement criteria are satisfied for the alternative closing lines claimed in East Bay. Incidental arguments relate to headland error and map and survey rules which govern time periods for which certain alternatives should be recognized if more outward claims are rejected.

5. Arguments supporting Exception 4, pertaining to island-headland problems, maintain that the Court's opinion, 394 U.S. 11, contemplated a realistic consideration of numerous factors. The opinion did *not* posit a cumulative, strict test which required that strong positive facts should be disregarded if a single minor, negative fact is found. We specially argue that this Court's pronouncements and important precedent on the great weight to accord the fluvial character and origin of islands were not correctly interpreted. We treat many erroneous conclusions as to particular island-headland problems affecting Bucket Bend Bay and other Mississippi Delta Bays, Caillou Bay and Atchafalaya Bay.

6. A few technical oversights are cumulated and treated in Exception 5. Even these errors principally relate to legal questions, e.g. the argument that a reasonably correct chart should control, but chart changes should not be given effect if they do not fairly reflect normal shoreline conditions or were obviously self-serving changes made to influence this litigation.

7. Louisiana argues in support of Exception 6 that Caillou Bay is juridically a bay, on the basis of

Isle Derniere forming part of the mainland. Important new evidence was presented to the Master, including evidence showing additional land largely closing water gaps shown on erroneous maps. Louisiana also argues it was materially prejudiced here by the federal change of position, because no surveys were made for the gaps between islands or on the bay side of the islands during the years the government recognized the bay. That federal position, it is argued, could not be changed, for reasons suggested in note 97, 394 U.S. 11. The Master agreed with Louisiana's basic positions, but was in error in holding that this Court's findings barred him from ruling in favor of Louisiana.

8. In conclusion, Louisiana argues that the many technical questions before this Court are of great importance to Louisiana, but are of minuscule significance to the Nation. Given the lion's share of offshore resources already, the federal government has unduly burdened this Court with three decades of Tidelands controversy. Never ending dispute over coast line details was not intended by Congress. Future controversy would be avoided by recognition of the lines described in Appendix III. Correct application of rules heretofore approved will reach that result.

No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,
Defendants.

EXCEPTIONS OF THE STATE OF LOUISIANA TO THE REPORT OF THE SPECIAL MASTER FILED JULY 31, 1974, AND BRIEF IN SUPPORT OF EXCEPTIONS

EXCEPTIONS

The State of Louisiana takes the following exceptions to the determination by the Special Master that certain waters considered inland waters by Louisiana within its coastline are either territorial seas or high seas:

1. The State of Louisiana excepts to the Special Master's conclusion that although it is conceded that prior to 1918 East Bay qualified as a juridical bay and the acts of sovereignty exercised over the bay by Louisiana and the United States are undisputed, that, nevertheless, the waters of East Bay are not now historic inland waters, but are part of the territorial sea or high seas, notwithstanding his finding that

the facts presented by Louisiana are undisputed and must be taken as true.

2. The State of Louisiana further excepts to the Special Master's conclusions that the waters treated by Louisiana as inland historic waters in the remaining Mississippi River Delta and Caillou Bay are not now historic inland waters, but are part of the territorial sea or high seas, notwithstanding his finding that the facts presented by Louisiana are undisputed and must be taken as true.

3. The State of Louisiana further excepts to the Special Master's failure to find that the portions of East Bay seaward of Closing Lines C and D satisfy the semicircle test: alternatively, the Report did not reflect dates when closing lines seaward of Lines C and D ceased to satisfy the test after 1918.

4. The State of Louisiana further excepts to the Special Master's failure to correctly and fully use applicable legal criteria for treatment of islands as part of the mainland and for determination of natural entrance points of bays. These errors have caused the Special Master to fail to recognize more seaward closing lines for recognized juridical bays, including Bucket Bend Bay, Blind Bay, Garden Island-Red Fish Bay, and Atchafalaya Bay.

5. The State of Louisiana further excepts to the Special Master's errors affecting several cartographic and survey questions in the Mississippi Delta such as not giving full effect to pre-December 6, 1969 chart configuration and failing to correctly find the

times of the existence of certain islands, low-water elevations, or low-water areas.

6. The State of Louisiana further excepts to the Special Master's conclusion that although he finds that Caillou Bay is in fact a juridical bay, the decision of this Court precludes his so holding.

PRELIMINARY STATEMENT

Louisiana asserted ownership and sovereignty of the marginal sea along its coast from the inception of its statehood in 1812. This claim was placed in jeopardy after the decision in *United States v. California*, 332 U.S. 19 (California I), where this Court held that the United States , and not the several states, has full dominion over the resources of the seabed of the territorial sea. Louisiana's inland claim to the waters of the delta lying between and adjacent to the passes of the Mississippi River had never been disputed or questioned by foreign governments, nor was the claim disputed by the United States Government until the inception of this lawsuit in 1948. Report of Special Master, Finding of Fact No. 16, at 69 (hereinafter, Report).[1] In *United States v. Louisiana*, 339 U.S. 699 (Louisiana I), and *United States v. Texas*, 339 U.S. 707, this Court applied to Louisiana and Texas the same principle announced in California I. Shortly thereafter, Congress enacted the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301 (1964 ed.), reaffirming title to all coastal states in the ownership of the seabed within three geographic miles of the coast and granting to the states along the Gulf the right to establish an historical offshore boundary not to exceed three leagues. The United States instituted suit against Lou-

[1] Louisiana's title to Caillou Bay as inland waters was first called into question by the United States in 1968 in this litigation. 394 U.S. 11, at 73 n. 97. See United States v. Louisiana, 363 U.S. 1, at 67 n. 108. The United States now takes the position that part of Caillou Bay, formerly recognized by the United States as inland waters of Louisiana up until 1968, is now "high seas."

isiana and subsequently joined Texas, Mississippi, Alabama and Florida to establish the measure of the offshore boundary of these states under the Submerged Lands Act. In *United States v. Louisiana*, 363 U.S. 1 (Louisiana II), this Court held that Louisiana had no historical boundary into the Gulf of Mexico, but was entitled to three geographic miles gulfward from its coastline. Jurisdiction was retained by the Court under a renumbered No. 9, Original to determine the coastline, fix the boundary and dispose of all other relevant matters. 364 U.S. 502.

Under the Submerged Lands Act the coast line of a state is defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." 67 Stat. 29 §2(C).

Proceedings were filed in No. 9, Original by the United States against Louisiana to fix Louisiana's coastline from which to measure three geographic miles. The Court then, in *United States vs. Louisiana, et al.* (Louisiana III), 394 U.S. 11, laid down certain rules and precepts for the location of said coastline. Some of the precepts laid down by this Court were self-executing and others depended upon factual determinations. The matter was then referred to the Honorable Walter P. Armstrong, Jr., as Special Master, on May 19, 1969. 395 U.S. 901.

This Court determined first, in the case of *United States v. California*, 381 U.S. 139 (California II) that the definitions contained in the international Convention on the Territorial Sea and the Contiguous Zone,

ratified by the United States in 1961, [1964] 15 U.S.T. (pt. 2) 1607, T.I.A.S. No. 5639 (hereinafter, Convention), should be considered in determining inland waters as defined by the Submerged Lands Act. This same principle was to be applied in determining the coastline of Louisiana. It was recognized that the definitions in the Convention did not fit all of the factual situations involved in establishing Louisiana's coastline, including a definition of historic inland waters.

The only remaining issue now before the Court is the gulfward extent of Louisiana's inland waters from which to measure the rights received by Louisiana in the marginal sea under the Submerged Lands Act.[2] No dispute exists over Louisiana's title to its coastal inland waters which were acquired on its admission into the Union as a state in 1812 under doctrine recognized in *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212. Principle reaffirmed in 363 U.S. 1, at 66 n. 108. In determining the line marking the seaward limit of Louisiana coastal inland waters, we are not dealing with rights acquired under the Submerged Lands Act, for those rights only commence from the line marking the seaward limits of inland waters.

[2] Large areas of Louisiana's coastline from which to measure Louisiana's marginal sea acquired under the Submerged Lands Act have already been fixed and established by agreement between the parties and decrees of this Court. A majority of the monies held in escrow by the United States under the Interim Agreement, resulting from oil, gas and mineral operations in the disputed areas, have been disbursed by decrees of this Court (decrees of December 13, 1965, 382 U.S. 288; December 20, 1971, 404 U.S. 388; and October 16, 1972, 409 U.S. 17). Most of the escrow money was paid to the United States under such decrees. Only a few areas of Louisiana's total coastline are still in dispute in this litigation.

The Special Master has now filed his report with the Court after holding numerous hearings. The transcript of these hearings occupy 46 volumes, containing a total of 6,444 pages. Louisiana offered 356 separate exhibits and the United States offered 419 separate exhibits.[3]

Each side was given adequate time by the Special Master to develop its various contentions. The exceptions filed by Louisiana to the Report of the Special Master are based primarily on erroneous conclusions drawn by him from undisputed facts, and his application of erroneous legal principles to some of these facts. Louisiana adopts many of the facts found by the Special Master, for they were made in most instances from undisputed evidence, and adopts many of his conclusions as our discussions in this memorandum will reveal.[4] Several exceptions relate to areas where the Special Master would have found enclosed inland waters after listening to the evidence, if the Special Master had not felt bound by certain language in the Court's opinion rendered prior to an evidentiary hearing and without the benefit of evidence produced before the Special Master. Louisiana urges in these areas the Special Master construed too narrowly the language of the Court. In any event the Court should make its final determination on the full record as made up after the evidentiary hearing before the Special Master. *Mississippi v. Arkansas*, ____U.S.____, 94 S.Ct. 1046, quoted note 18, *infra*.

[3] For the convenience of the Court, Louisiana files herein with this memorandum, as Appendix II, an index to the transcript and an index to all of the exhibits.

[4] See discussions *infra* of Ascension Bay and East Bay.

ARGUMENT

FIRST EXCEPTION

HISTORIC EAST BAY

The State of Louisiana excepts to the Special Master's conclusion that although it is conceded that prior to 1918 East Bay qualified as a juridical bay and the acts of sovereignty exercised over the bay by Louisiana and the United States are undisputed, that, nevertheless, the waters of East Bay are not now historic inland waters, but are part of the territorial sea or high seas, notwithstanding his finding that the facts presented by Louisiana are undisputed and must be taken as true.

EAST BAY IS AN HISTORIC BAY

East Bay, recognized from the earliest times as a bay on maps of the Mississippi Delta, lies between the two main passes of the Mississippi River. It is conceded by the parties to this litigation that East Bay was a juridical bay until at least 1918, to its outermost natural entrance points. Report, at 27.[5] In spite of this, the Master determined, as of the date of his Report, East Bay was not an historic bay nor any longer a juridical bay to its outermost natural headlands.

Criteria Fixed by the Court For Establishing an Historic Bay

Let us now first consider what this Court established as precepts to be followed by the Special Master in considering Louisiana's historic inland water claims. The Court determined: (1) It would be inequitable in adapting principles of international law to resolve this domestic controversy to permit the United States to distort those principles in the name of its power over foreign policies and external affairs by denying any effect to past events. 394 U.S. 11, at 78. (2) That the only fair way to apply the Convention's recognition of historic bays to Louisiana's claim would be to treat the claim of historic waters as though it were being made by a national sovereign and opposed by another nation. 394 U.S. 11, at 77. (3) The Special Master should consider Louisiana's exercise of dominion as relevant to the evidence of historic title. 394 U.S. 11, at 78. (4) To the extent the United States could rely on state activities in advancing a claim to historic title they are relevant to the determination of Louisiana's historic title. 394 U.S. 11, at 76, 78. (5) While the United States is not required to take affirmative steps to add to its territory by drawing straight baselines,

> [i]t would be [unprecedented] to allow the United States to prevent recognition of a historic title which may already have ripened because of *past* events, but which is called into question for the first time in a domestic lawsuit. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in *United States v. California.* See n. 97, *supra.* 394 U.S. 11, at 77 n. 104. [Emphasis by the Court].

(6) Historic bays are not defined in the Convention, but their definition stems from general principles of

[5] This means the waters landward of the closing line were inland waters. Articles 5(1) and 7 of the Convention.

international law. Thus, while there is no universal accord on the exact meaning of historic waters, there is substantial agreement on the outline of the doctrine and on the type of showing which a coastal nation must make. *United States v. Louisiana*, 394 U.S. 11, at 74-75.

The Court referred to the Juridical Regime of Historic Waters, Including Historic Bays (hereinafter, *Juridical Regime*) as a guide in determining whether a bay was an historic bay under international law.[6] These criteria are as follows:

> "There seems to be fairly general agreement that at least three factors have to be taken into consideration in determining whether a State has acquired a historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States. First, the State must exercise authority over the area in question in order to acquire a historic title to it. Secondly, such exercise of authority must have continued for a considerable time; indeed it must have developed into a usage. More controversial is the third factor, the position which the foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of an historic title; others think that absence of opposition by these States is sufficient." Juridical Regime of Historic Waters, Including Historic Bays, [1962] 2 Y.B. Int'l L. Comm'n 1, 13, U.N. Doc. A/CN. 4/143 (1962). 394 U.S. 11, at 23-24 n. 27.

[6] The Court also referred to the REGIME OF BAYS IN INTERNATIONAL LAW (1964) by Dr. Leo Bouchez. Dr. Bouchez was recognized by the Court as an authority on historic inland waters. See United States v. Louisiana, 394 U.S. 11, at 22 n. 23, 23 n. 27, 27 n. 31, 76 n. 103.

Louisiana followed these precepts in developing its case before the Special Master. Louisiana's first exception is based on the fact that the Special Master failed to follow these precepts announced by the Court in making his determination that East Bay is not an historic bay.

The Special Master Found the Evidenc Introduced by Louisiana on its Historic Bay Claims was Uncontradicted and Must be Taken as True

East Bay is surrounded by land of Louisiana except for its opening in the Gulf of Mexico, and it is undisputed that since the mid-1800's there have been settlements along East Bay's shores, including Port Eads, Pilot Station, Burrwood (and before that, Pilot's Lookout and Custom House on the shores of East Bay) and Pilottown near the head of the bay. Additionally, the Coast Guard has maintained stations at each side of the mouth of the bay.[7] It is only natural that East Bay was considered a juridical bay from the earliest times. We emphasize the Special Master found that it was conceded by both the United States and Louisiana that East Bay was a juridical bay until at least 1918. Report, at 27. We are here dealing with a sizeable body of enclosed waters long recognized as inland waters, a large portion of which the United States now argues

[7] Dr. Morgan, tr. 193, 194; La. Exhs. 8, 159 and 169.

is open sea.[8] There is no finding by the Special Master when East Bay ceased to be a juridical bay after 1918, if it did, although the Special Master did find, influenced by this Court's ruling, that East Bay is not now a juridical bay to its outermost natural headlands. Report, at 29.[9] The Special Master determined that East Bay was not an historic bay, Report, at 22, even though the Master made findings of fact from the uncontradicted evidence introduced by Louisiana as to certain acts of sovereignty exercised over East Bay by Louisiana as follows:

1. Title to Louisiana's coastal inland waters

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[8] In 1918, when it is agreed that East Bay was a juridical bay, it contained inland waters shoreward of its closing line of 31,588 acres or more than 7,000 acres in excess of that required by the semicircle test. See Appendix I, Fig. 1, at 134.

[9] Without having all of the facts and on a motion for judgment, this Court stated: "Since East Bay does not meet the semicircle test on a closing line between its seawardmost headlands—the tip of the jetty at Southwest Pass and the southern end of South Pass—it does not qualify as a bay under Article 7 of the Convention on the Territorial Sea and the Contiguous Zone." 394 U.S. 11, at 53. The Court then went on to find, in substance, that an indentation which does not satisfy the semicircle test is not a bay, but open sea. When these statements were made the Court did not have before it the evidence that has now been presented to the Special Master, nor the fact that both parties concede that East Bay was a juridical bay until at least 1918. This statement did not apply to Louisiana's historic claim referred to the Special Master to make a determination in the first instance. The Special Master felt bound by the above statements of the Court to restrict tributary waters in determining the semicircle test. For a further discussion of this issue, see pages 77-92 *infra*.

passed to the State in 1812 by virtue of its act of admission to the Union. While the United States retained title to all public lands, title to navigable inland water-bodies, including bays, vested in the State of Louisiana upon its admission. This title was confirmed to Louisiana under the doctrine recognized in *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212 (1845). (See 363 U.S. 1, 66 (1960) n. 108.)

2. Commencing in 1870, Louisiana enacted legislation to regulate oyster fishing in its coastal bays.

3. Since 1886 Louisiana has legislatively reaffirmed its title to bays along its coast, including those in the delta. (Acts of 1886, 1892, 1902, 1904, and 1910).

4. Louisiana has granted oyster leases in the shallow waters of many Mississippi delta bays subsequent to the above legislation.

5. Statutes regulating shrimping in Louisiana have defined the inside waters of the delta area (to which stringent closed season laws have applied) as follows:

Act 103 of 1926:

> All. . .bays and sounds found along the Louisiana Coast of the Gulf of Mexico.

Act 143 of 1942:

> All. . .bays and sounds along the Louisiana coast, and all other waters in and contiguous to the Gulf of Mexico *whether or not partly enclosed by* islands, sand [s]pits,

marshes, or *delta fingers*, wherein the water is less than three (3) fathoms in depth.

Act 51 of 1948:

The inside waters shall include . . . Breton Sound, . . . Blind Bay, Garden Island Bay, East Bay, West Bay . . . and all other bays and sounds along the Louisiana coast. . . .

6. Since the early 1900s the Louisiana Wild Life and Fisheries Commission and its predecessor agency, the Department of Conservation, have from time to time used a system of boat and aircraft patrol in which imaginary lines joining outermost mudlumps and other features marking the seaward terminus of the passes have been utilized to determine a belt of waters lying three miles from such lines for purposes of such patrol.

7. . . . arrests have been made and fines levied against persons violating Louisiana's statutes inside the areas of the delta described above, regardless of nationality. . . .

8. In patrolling Louisiana's coastal inland waters, enforcement agents of the Conservation Department and the Wild Life and Fisheries Commission have used armed vessels or have themselves been armed and have used armed force to arrest violators of Louisiana's laws.

9. Both United States citizens and foreign nationals, including Japanese, Chinese, Filipino, Mexican, and Spanish fishermen, have

been required to obtain Louisiana licenses to fish in Louisiana waters.

10. Licenses of fishermen fishing in Louisiana waters have been checked by Wild Life and Fisheries enforcement personnel without regard to nationality.

11. Regardless of nationality, persons caught fishing without a license within Louisiana waters or three miles seaward from the mouth of any bay . . . have been arrested and have had charges filed against them by Louisiana enforcement officers.

12. About 1946, personnel on three Mexican fishing vessels were arrested by an aerial law enforcement agent for the Wild Life and Fisheries Commission for violating the closed shrimping season in East Bay. These arrests were made outside of a 3-mile belt from the shore and inside the East Bay closure claimed by Louisiana.

13. Louisiana enacted Act 68 of 1932, Act 367 of 1940, Act 385 of 1948, and Act 386 of 1948 to prevent pollution of State waters.

14. Enforcement agents of the Wild Life and Fisheries Commission have conducted pollution control activities in East Bay consistent with Louisiana pollution control statutes and have issued citations for failure to comply with these regulations.

15. Louisiana issued mineral leases under Act 30 of 1915 as amended by Act 315 of 1926 covering most of the Mississippi delta bays prior to issuance of the Truman Proclamation in

1945. These included Mineral Lease 192 in 1928 covering West Bay and East Bay, Mineral Lease 195 in 1928 covering Grand Bay, Grand Coquille Bay and many other bays to the north of the delta contiguous with Breton Sound, and Mineral Lease 335 in 1935 covering Paddy Bay, Bull Bay, Delta Bend, Quarantine Bay, Breton Sound and Chandeleur Sound. Portions of these leases remain active.

16. Louisiana's claim to waters of the delta lying between and adjacent to the passes of the Mississippi River has never been disputed or questioned by foreign governments, nor was the claim disputed by the United States government until the inception of this lawsuit in 1948. Report, Findings of Fact, at 67-69.[10]

There Were Other Acts of Sovereignty and Jurisdiction Exercised over East Bay By Louisiana and the United States to Which Weight Was Not Given

Louisiana did not urge before the Special Master that the United States had adopted straight baselines under Article 4 of the Convention, for the Convention

[10] The Special Master submitted to counsel a preliminary report to which Louisiana filed a *Motion to Clarify, Amend and Supplement Findings of Fact and Conclusions of Law*, a copy of which motion is made Appendix I to this brief. The Master's findings of fact in Appendix B to his report, the recognition that East Bay was a juridical bay until at least 1918, and the findings that Caillou Bay is a juridical bay resulted from a hearing before the Master on this motion. For a more detailed discussion of the characteristics of East Bay and the evidence on which the Special Master made the above findings, see Appendix I, to this brief, at 129-172.

was only approved by the United States in 1961. Louisiana's title to East Bay as an historic bay had ripened long before the adoption of the Convention.

As added support of Louisiana's historic bay claim, the evidence established the United States took actions by setting aside certain areas of water, including East Bay, in which it had a particular interest, and exercised acts of sovereignty over these areas. These actions should have been considered by the Special Master along with the other acts of sovereignty exercised over East Bay by the United States and Louisiana. Louisiana did not urge to the Special Master that the inland water line[11] established inland waters by itself, for this Court has already held that such is not the case, [12] but left open the question of whether or not this regulation of navigation could be considered along with other acts in establishing historic inland waters. The Special Master gave no effect to the inland water line as a factor to be considered along with other acts of sovereignty to establish historic inland water. Report, at 9.

Louisiana urged that certain charts attached to the opinion of this Court in *Louisiana v. Mississippi*,[13] should likewise be considered as an assertion of sovereignty over the area outlined in the charts. The Special Master refused to give any weight to these charts. Report, at 10-11.[14]

[11] Act of February 19, 1895, 28 Stat. 692.
[12] 394 U.S. 11, at 21-22.
[13] 202 U.S. 1.
[14] The charts showing the delta inland waters have been

The United States enclosed the Delta, including East Bay, in 1936, fixing the area to take the census of the United States. The Special Master failed to give any weight to this indication of Louisiana's coastline by a Department of the United States Government.[15] Report, at 11.

The United States, by proclamation of President Theodore Roosevelt in 1907, designated an area surrounding the Mississippi Delta as Tern Islands Reservation. This area was patrolled and the birds were protected. The Special Master failed to give any weight to this assertion of sovereignty by United States in establishing Louisiana's historic water claims. Report, at 11-13.[16]

Even though none of these acts of sovereignty, considered alone, may be sufficient to establish inland waters, they should have been given serious weight by the Special Master, (where East Bay was a juridical bay until at least 1918) along with the other uncontradicted evidence of sovereignty exercised by Louisiana over East Bay as shown by the findings of fact of the Special Master in Appendix B to his report.

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published in the reports of cases by the U.S. Supreme Court since 1906.

[15] See Proudfoot, MEASUREMENT OF GEOGRAPHIC AREA at 33, U. S. Dept. of Commerce (1946). This publication showed East Bay as a juridical bay in 1946.

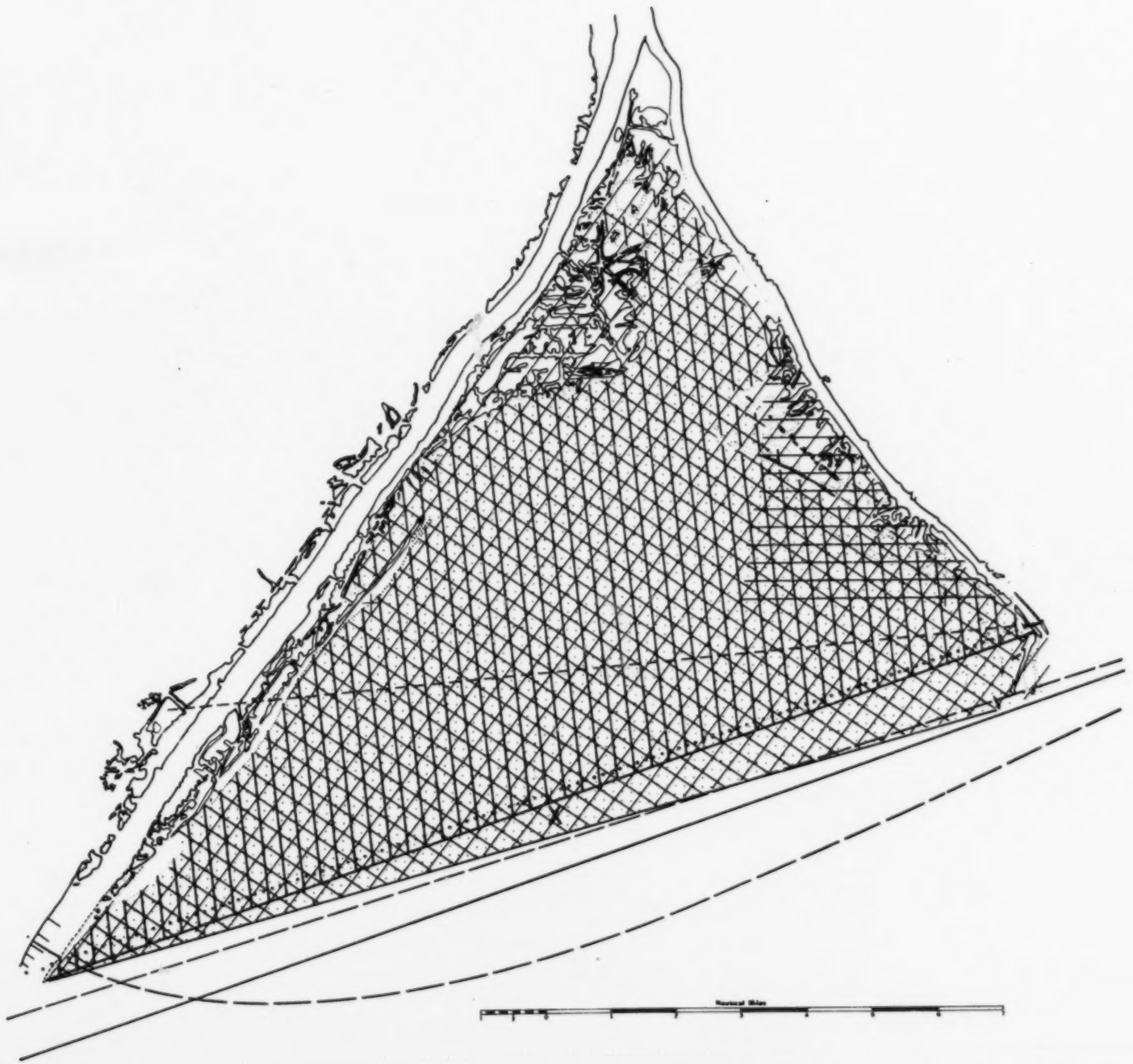
[16] For a detailed discussion of the Inland Water Line, charts in the Louisiana v. Mississippi case, the charts of the Department of Commerce for measuring the United States to take the census thereof, and Tern Islands Reservation see Appendix I to this brief.

The attached Plate I is a composite visual explanation of some of the acts of sovereignty exercised by Louisiana and the United States over East Bay as established by the evidence.

Many of the acts of sovereignty, as found by the Special Master, commenced prior to 1918 when the waters of East Bay were conceded to be inland waters; such acts continued up to the present time. The assertion of these acts and others after 1918 is clear evidence, announcing to the world, Louisiana still considered the waters of East Bay inland. Louisiana's assertion of ownership and sovereignty after 1918 maintained Louisiana's title to East Bay as an historic inland water bay, even assuming, for purpose of argument, East Bay failed after that time to meet the test as a juridical bay. Louisiana's title to East Bay was not questioned by the United States until 1948 as found by the Special Master. Louisiana's title to East Bay was vested by past events both as a juridical bay and an historic bay before 1948. The United States cannot now, as cautioned by the Court, prevent recognition of East Bay as an historic bay.

The Principle Established by the United States that when a Bay formed part of the Interior of the United States, It is Deemed to Continue a Part Thereof, Should be Recognized

The United States argues before this Court, in its exceptions to Judge Maris' report as Special Master in *United States v. Florida*, No. 52 Original, and in their petition for writ of certiorari to this Court in the case



COLOR PLATE I

EAST BAY

STRAIGHT BASELINES AND OTHER JURISDICTIONAL ACTS*

FEDERAL:

= Census Bureau measurement of area of United States and Louisiana for 1940 Census, still recognized in 1968. See e.g. La. Exh. 52 and 285.

Lines described on charts or other publications to show inland waters designated by:

- - - - = 1895-1907--Secretaries of Treasury and Commerce and Labor
..... = 1911--Secretary of Commerce and Labor
— — = 1917--Secretary of Commerce
——— = 1927-32--Secretary of Commerce

See e.g. La. Exh. 51, 98 and 285.

— — = Tern Island Bird Reservation boundary, declared by President Roosevelt in 1907 and in force until early 1950's. See e.g. La. Exh. 28 and 285.

STATE:

= Oyster leasing zone (scores of smaller oyster leases granted commencing 1904 and probably continuing into 1940's). See e.g. La. Exh. 55 (items 19 through 164), 67 and 68.

= Mineral leases (full extent not shown) covering East Bay, granted 1928 through 1940's, some still in force. See e.g. La. Exh. 58 (especially item 57) and 95.

= Wildlife and Fisheries enforcement activity 1919 to present. See e.g. La. Exh. 55 (particularly items 194, 195 and 198).

X = Locale of arrest of several foreign fishing vessels, circa 1947. See La. Exh. 8 for exact location by Joseph Billiot.

= Area of exclusive Louisiana fishing activity, except for fishing conducted by Japanese circa early 1930's to 1941 in recognition of Louisiana authority by license. See e.g. La. Exh. 55 (items 194 through 197).

*See text for numerous additional lines and acts not practical to illustrate. Areas and lines approximate for illustrative purposes.

of *United States v. Alaska*, No. 73-1888, that the United States has consistently discouraged coastal states from extending their jurisdiction into areas previously regarded as high seas. This argument is not valid in this case, for here the United States is arguing that areas which were concededly inland waters at one time are now part of the open sea. There is no evidence in the record that the United States has ever taken a position in its international relations that East Bay was not inland waters of Louisiana before Louisiana's title was placed in jeopardy in 1948.[17]

The Special Master, in his preliminary report, to which the Motion to Clarify, Amend and Supplement the Findings of Fact and Conclusions of Law was filed by Louisiana (Appendix I), determined that East Bay is not an historic bay. The comments appearing in the Report filed by the Special Master with the Court appearing at pages 19-21 are substantially the same as those contained in the preliminary report. These were stated prior to the findings of fact contained in Appendix B to the Master's report and to the findings by the Special Master that it was conceded that East Bay was a juridical bay up until at least 1918. The fact that East Bay was a juridical bay until at least 1918 is a recognition that the acts of sovereignty performed by Louisiana up until at least that date were such as were exercised over inland waters. The later findings of fact, as shown in Appendix B to the Master's Report,

[17] We have been unable to find in our research any case where a nation has acknowledged that an area as large as East Bay, which once was inland water, is now open sea.

differ to some extent with the findings in the body of the Report. Appendix B to the Report explains and amplifies the acts stated in the body of the Report. There is nothing in the Special Master's Report indicating he gave any weight to the admitted fact that East Bay was a juridical bay containing inland waters until at least 1918. This strengthens the reason the Court should make its determination based on the total record.[18]

Recognition of East Bay's long-standing status as a juridical bay is very material. It adds strength to Louisiana's claim that even though East Bay may have lost its status as a juridical bay, nevertheless, it continued as an historic bay. Under the principle urged by the United States at the Hague Conference in 1930 and recognized as the United States' position in the U. N. Conference on the Law of the Sea which led to the 1958 Convention on the Territorial Sea and the Contiguous Zone, it was the United States' position that waters forming part of the interior waters of the United States are deemed to continue a part thereof.

> Waters, whether called bays, sounds, straits, or by some other name, which have been under the jurisdiction of the coastal state as part of its

[18] This Court in considering a Report of a Special Master in an original action decides the case "upon [its] own consideration and . . . independent review of the entire record, of the report filed by the Special Master, of the exceptions filed thereto, and of the argument thereon. . . ." Mississippi v. Arkansas, ____U.S.____, 94 S.Ct. 1046, at 1049.

interior waters, are deemed to continue as part thereof.[19]

This principle was recognized by Dr. Henkin in his testimony as an expert for the United States in this case where he said:

> But if you might have started even with a geographic bay but in fact as a result of change it ceased to be one but you continued to assert rights in those bays, and other people continued to recognize them, then you might have moved from, if you will, a geographic to an historic bay. Dr. Henkin, tr. 4913.

There is no Legal or Factual Basis to Support a Finding That East Bay is an Historic "Territorial" Bay Rather than Inland Waters

Faced with the acknowledged fact that East Bay was a juridical bay until at least 1918, and with the uncontradicted evidence introduced in these proceedings of acts of sovereignty exercised by Louisiana and the United States over East Bay, the United States advanced the unsound argument that there are two kinds of historic bays, one being an historic territorial bay and the other being an historic inland water bay. This unsupported theory was adopted by the Special Master

[19] Statement of Mr. Miller, the representative of the United States of America, at the Hague Conference on the Codification of International Law in 1930 quoted as a part of the United States position under the approved heading, "Scope of the Theory of Historic Bays," in the Preparatory Documents, Vol. I, Official Records U. N. Conference on the Law of the Sea 1958, U.N. Doc. A/CONF. 13/37, at 37. See testimony of Dr. Bouchez, tr. 957-66.

in his finding that East Bay is an historical territorial bay. The difference in the two types of bays, as argued by the United States and found by the Master, is that in one, foreign nationals had the right of innocent passage, whereas in the other type of bay, foreign nationals had no right of innocent passage. By holding the waters in East Bay territorial instead of inland, Louisiana is deprived of title to the bed of East Bay, which it had owned for more than one hundred years. The Master adopted this argument of the United States in spite of the fact that he found Louisiana had been enforcing its game and fishing laws by armed vessels in East Bay from at least 1900 against residents and foreign nationals alike. To give credence to this argument by the United States as adopted by the Master, it must be found that Louisiana ceased to treat the waters of East Bay as inland waters after 1918. The evidence is just to the contrary.

There is no basis in international law for this distinction advanced by the United States and adopted by the Special Master. This is particularly true as it applies to East Bay, admittedly once a juridical bay.

Professor Yehuda Z. Blum, in his treatises entitled *Historic Titles in International Law*, at 299-300 (1965), in discussing the fact that the waters of historic bays are internal waters, had this to say:

> Article 4 of the Draft Convention prepared by Schucking for the 1930 Hague Codification Conference—as amended following the discussions held in the Committee of Experts appointed by the Assembly of the League of Nations in 1924—

expressly provides that the waters of bays, as defined in that article (i.e. bays bordered by a single State, where the distance between the two shores does not exceed ten marine miles, "unless a greater distance has been established by continuous and immemorial usage") are to be assimilated to internal waters. Likewise, Article 7, paragraph 4, of the *Territorial Sea Convention* stipulates that the waters enclosed by a baseline drawn across the entrance of a bay, the width of which does not exceed twenty-four miles, "shall be considered as internal waters." Although paragraph 6 of the same article expressly excludes historic bays from the scope of the provisions of this article, it is clearly understood that the intention of this stipulation was to recognize some departure from the restrictive rules envisaged for ordinary bays, the entrance of which—if claimed as territorial bays—could not exceed a certain width. This question does not arise in respect of historic bays.

> It may therefore be confidently assumed that this provision is not meant to indicate any distinction between the legal regime of the waters of ordinary bays, recognized as territorial bays, and the regime accorded to historic bays. Both categories of bays are to be regarded as internal waters.

The theory advanced by the United States that the waters of East Bay are part of the territorial sea instead of inland waters is likewise disputed by the Convention. The rules of Article 7 of the Convention, it will be noted, are prescribed solely for the purpose of defining the baseline for the measurement of the territorial sea across the mouths of or within bays, and

that the waters inside that line are inland waters. Accordingly, the only sensible meaning of Section 6 of Article 7 (the exception of historic bays) is that a baseline drawn across the entrance of historic bays encloses inland waters. Thus, in the document, *Historic Bays*, Memorandum of the Secretariat of the United Nations, Document A/CONF. 13/1, one of the United States' own exhibits in the case (Exh. 97), we find:

> "It is always necessary to remember, in dealing with 'historic waters,' the essential point that those waters are internal waters. This fact explains many aspects which would be otherwise difficult to grasp. The theory was originally evolved to apply to 'bays,' and is still referred to as the theory of 'historic bays,' because it was never envisaged that it might apply except in areas which, by reason of their configuration, are generally not used as major international routes of transit;..." Historic Bays 117. (See also Juridical Regime 163 wherein it is stated that the dominant opinion is that historic bays are internal waters.)[20]

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[20] "It has long been part of international law that, on a basis of long-continued user and treatment as part of the coastal domain, waters which would not otherwise have that character may be claimed as territorial or as internal waters—usually the latter, because, in practice, the doctrine has hitherto been applied mainly to 'historic bays' i.e., by permitting a closing line irrespective of length to be drawn across the entrance to certain bays respecting which a historic claim could be substantiated, *thus converting the entire waters of the bay into internal or national waters.* The Court in the Fisheries case defined historic waters as follows

McDougal and Burke, in their recognized authority, *The Public Order of the Oceans*, at 340, (1962), in commenting on historic bays, had this to say:

> Turning now to policy with respect to historic bays, the most general question is that of identifying the conditions which create general expectations that the waters of a bay are within the territory of a state *to the same extent as the adjoining land masses*. The primary factors for community policy relate to the patterns of practice which are advanced to support the notion of a prior assertion of authority and to the conditions which may be said to characterize acquiescence in such a claim by other states.
>
> Although writers and experts in codification place great emphasis and importance on the usage, or practices, of a coastal state in exercise of authority over a bay, it is not here suggested that a coastal state's expectation about its authority over a bay must be unequivocally manifested by an explicit claim that the bay is considered within internal waters. *Control of fisheries, imposition of administrative regulations upon foreign vessels, legislative enactments and local judicial decisions affecting foreign vessels all may serve to indicate the local belief that the bay is a part of state territory.* Similarly the element of acquiescence should

(I.C.J., 1951, p. 130): 'By "historic waters" are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title'." The British Year Book of International Law 1954, Thirty-first year of Issue, The Law and Procedure of the International Court of Justice, 1951-54, by Sir Gerald Fitzmaurice, at page 381. [Emphasis added].

> not be regarded technically; *lack of protest by interested states even to equivocal practices*, the general assumptions of writers over a period of time, and the response of decision-makers both national and international would appear sufficient indication of concurrence with the coastal expectation to establish evidence of a community expectation. [Emphasis added].

On the basis of the above authorities, having found that the acts of sovereignty exercised by Louisiana over East Bay were sufficient, at least, to establish the waters as part of the territorial sea, the Special Master should have determined that the waters of East Bay are *historic inland waters*.

The Master's determination that assertions of sovereignty by Louisiana established the waters as part of the territorial sea and are not probative of historic inland waters is apparently based upon a misunderstanding of a certain facet of this Court's opinion in Louisiana III relating to rejection of the historic *waters* claim of Louisiana based solely on the Inland Water Line designated under the Act of 1895.[21] The importance of statements of the Court on this subject lies not in any erroneous implication that jurisdictional acts which may be done both in territorial and in inland waters are not probative of an historic inland *bay* claim; for no such legal rule was presented in the portion of the Court's opinion discussing "historic and inland waters." The only agreed rules for historic bay determination given by the Court, for

[21] Act of February 19, 1895, 28 Stat. 692.

which it found substantial accord, were referred to in notes 102 and 104. See 394 U.S. 11, at 23 n. 27; cross-referenced at 75 n. 102.

> These factors are: (1) The exercise of authority... (2) the continuity of this exercise... (3) the attitude of foreign states. 394 U.S. 11, at 23 n. 27.

It is true, the Court indicated other considerations in notes 28 and 30, by way of *obiter*, in the context of dealing with Louisiana's historic *waters* claim based on the Act of 1895. We emphasize the word *waters* to show that the relevancy of the Court's remarks in notes 28 and 30 (394 U.S. 11, at 24, 26), about matters for which there was a want of accord, was further lessened by the context. The context was not a discussion of historic *bay* claims, but of the broad historic *waters* claim based upon the former Inland Water Line position or Coast Guard Line argument which was an historic waters contention, and, included waters seaward of bays, *not an historic bay contention.* Notes 28 and 30, 394 U.S. 11, at 24, 26 both quoted *Juridical Regime*. Note 28 reads:

> Historic title can be obtained over territorial as well as inland waters, depending on the kind of jurisdiction exercised over the area. "If the claimant State exercised sovereignty as over internal waters, the area claimed would be internal waters, and if the sovereignty exercised was sovereignty as over the territorial sea, the area would be territorial sea." Juridical Regime of Historic Waters Including Historic Bays, *supra*, n. 27, at 23.

Note 30 reads:

> The recent United Nations study of the concept of historic waters concluded that "if the claimant State *allowed the innocent* passage of foreign ships through the waters claimed, it could not acquire an historic title to these waters as internal waters, only as territorial sea." Juridical Regime of Historic Waters, Including Historic Bays, *supra*, n. 27, at 23. Under that test, since the United States has not claimed the right to exclude foreign vessels from within the "Inland Water Line," that line could at most enclose historic territorial waters. [Emphasis added].

The material referred to as being at page 23 is found in the typed copy of the *Juridical Regime* document at page 66, U.S. Exh. 99, paragraph 164. Paragraph 163 had stated the general proposition that as to historic bays, the coast of which belong to a single state, the waters were internal waters and that the territorial waters commence outside that line.

> . . . [T]he dominant opinion, as gathered from the statements assembled in the memorandum, seems to be that "historic bays" the coasts of which belong to a single State are *internal waters.* [Emphasis added].

Paragraph 165 at page 67 of the document, *Juridical Regime*, U. S. Exh. 99, made plain that the principles quoted in notes 28 and 30 of this Court's opinion, page 66 of U.S. Exh. 99, are reconciled with paragraph 163's statement by pointing out *that the*

territorial waters classification can only appertain to *waters* and not to *bays*.

This paragraph 165 reads as follows:

> In the latter case, [referring to historic waters that are part of the territorial sea rather than inland in character] it would be preferable not to speak of an "historic bay" but of "historic waters" of some other kind.

The terms *waters* and *bays* were employed quite advisedly according to their context in the text of the Court's opinion. Thus, when an indentation sufficient to be deemed a *bay* is the situs of the act, the act *coupled with the geography* shows the inland nature of the sovereignty asserted.[22] It has been decided that the waters claimed by Louisiana in the Mississippi Delta on historic grounds, (and this is especially true of East Bay), have a configuration sufficient to characterize them as historic bays.

> We do not pass on this contention except to note that, by the terms of the Convention, historic bays need not conform to the normal geographic tests and therefore need not be true bays. How unlike a true bay a body of water can be and still qualify as a *historic bay* we need not decide, for all of the areas of the Mississippi River Delta which Louisiana claims to be historic inland

[22] This is the reason the drafters of the Convention, in preparing Article 7, used a closing line between the headlands of a bay to enclose inland waters instead of measuring from the low water within the bay. Where a bay is an historic bay, the waters behind the closing line are inland waters, not part inland and part territorial.

> waters are indentations sufficiently resembling bays that they would clearly *qualify under Article 7 (6) if historic title can be proved. United States v. Louisiana*, 394 U.S. 11, at 75 n. 100. [Emphasis added].

There was no evidence introduced in the record that foreign nationals were permitted innocent passage in East Bay. To the contrary, the evidence, as found by the Special Master, establishes that Louisiana used armed vessels to require foreign nationals to secure fishing licenses to fish in East Bay and that foreign nationals were required to abide by Louisiana's fishing laws and regulations. Somehow, the federal arguments concerning innocent passage have perverted the meaning of what was done in the document *Juridical Regime*, changing a rule that permitting innocent passage shows merely territorial intent into a false rule that only acts actually expelling foreigners physically are probative of an inland intent. The United States has failed to cite any authority for such a rule.[23] There is no occasion for innocent passage within East Bay, for innocent passage relates to routes which connect parts of the high seas, not entrances to inland waters nor inland waters themselves.

The United States urged in the *Alaskan* case, that the waters in Cook Inlet were territorial waters instead of historic inland waters. The U. S. District Court found that the United States, and later the State of Alaska, regulated fishing in Cook Inlet and

[23] Moreover, Louisiana did expel foreigners.

on this evidence found Cook Inlet was an historic bay and the waters therein were necessarily inland, thereby rejecting the same argument advanced by the United States and adopted by the Special Master in this case. This holding by the District Court was affirmed by the United States Ninth Circuit Court of Appeals.[24]

The evidence on Louisiana's historic bay claim is more substantial than that in the *Alaskan* case on which the Court found Cook Inlet was an historic bay necessarily containing inland waters landward of the closing line between its two headlands.

On the urging of the United States, the Special Master held that the only test to be applied in assessing what acts of sovereignty over a bay establish an historic bay as inland waters instead of territorial waters, were acts which interfere with the right of innocent passage of foreign vessels. It was on this premise that the Special Master determined

> The regulation of fishing within the territorial seas off the coast of the States to the extent that it does not conflict with federal law has long been recognized. See *Manchester v. Massachusetts*, 139 U.S. 240 (1891); *Skiriotes v. Florida*, 313 U.S. 69 (1941); *Toomer v. Witsell*, 334 U.S. 385 (1948). Report, at 20.

Unfortunately, the Special Master failed, in adopting the reasoning advanced by the United States, to give effect to Louisiana's enforcement of its fishing and game laws against foreign nationals in East Bay and the other bays along the Louisiana coast. The United States does not permit unauthorized foreign nationals to fish in inland waters or the three-mile territorial sea. When Louisiana enforced its game and fishing laws against foreign nationals in East Bay, it was asserting acts of sovereignty over the total of East Bay and three miles gulfward from the closing line of East Bay. It has been recognized in international law, as we will demonstrate, that the enforcement for a long period of time by a nation of its fishing laws in a bay against foreign nationals is sufficient to create historic inland waters even though the bay does not qualify as a juridical bay.[25]

The Court has already held the United States could urge acts of sovereignty exercised by Louisiana in establishing inland waters. Where Louisiana's title to East Bay as an historic bay had ripened in 1948 by past events, the United States cannot now disavow East Bay as an historic bay to the prejudice of Louisiana. The cases cited by the Special Master, mentioned above, relate to a state enforcing its laws against its own citizens. We do not question the rulings in those cases. Those cases did not deal with the question of a state enforcing its laws in a bay against foreign nationals, such as Japanese, Chinese, Filipino, Mexican

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[24] United States v. Alaska, 352 F.Supp. 815, affirmed by United States Court of Appeals, 9th Circuit 497 F.2d 1155 (1974). Application is now pending before this Court by the United States for writ of certiorari under No. 73-1888.

[25] McDougal and Burke, THE PUBLIC ORDER OF THE OCEANS, at 340. See authorities on pages 34, 39-42 of this brief.

and Spanish. Requiring foreign nationals to purchase fishing licenses from Louisiana, and forcing foreign nationals to obey Louisiana fishing laws in East Bay, certainly interfered with their innocent passage in East Bay, the same as the arresting of Mexicans in East Bay 4.3 miles east of Southwest Pass in about 1946. Report, Finding of Fact No. 12, at 69. If Japanese, Chinese, Filipino, Mexican and Spanish had not obtained Louisiana licenses, they would have been prevented from fishing in East Bay or they would have been arrested if they fished without licenses as certain Mexican nationals were arrested. The fact that they purchased licenses and were checked by the Wild Life and Fisheries personnel showed their acquiescence in Louisiana's title to these inland waters. These acts of sovereignty inure to the benefit of the United States under the ruling of this Court in establishing Louisiana's inland waters.[26]

Claims to exclusive rights and exercise of sovereignty over bays in enforcing these rights have resulted in establishment of historic bays, particularly when these acts were prior to the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas of 1958. The granting of leases over the area to be used for fishing and the requiring of licenses to fish in the areas are assertions of jurisdiction. Gidel, 1 *Le driot international public de la mer*, 501 (1932); J.P.A. François, *Deuxieme rapport sur la haute mer*, Doc. A/CN. 4/42, (1951) 2 Y.B.I.

[26] This was long before the adoption of the Truman Proclamation in 1945.

L.C. 99; A. Papandreou, *La situation juridique des pecheries sedentaires en haute mer*, 72 (1958). (Also Queensland and Western Australia, *Papandreou* at 40-43 and 64-65; *François* at 96-98). McDougal and Burke, *The Public Order of the Oceans.*

To make an analogy to possession and prescription rules of the Civil Law, from which International Law on Historic Waters was derived, possession must be open and unequivocally as owner; that is, there must be acts suggestive of an intent to act as full owner. Navigational regulation *alone* under the circumstances described by the Court can well be understood as insufficient. However, exclusive acts have plainly evidenced a domestic imperium and dominium in East Bay: first, it is conceded that East Bay was a juridical bay until at least 1918, thereby removing any question that East Bay was inland waters of Louisiana until at least 1918. During the time East Bay was a juridical bay, Louisiana exercised acts of sovereignty over the bay which have continued to the present time, such as: asserting its title to East Bay by legislative acts open for inspection to the world; oyster leasing that started in 1903; mineral leasing which started in 1928; patrolling by armed vessels and armed personnel to enforce Louisiana laws since 1900, and arresting of foreigners in these waters for violating the Louisiana law. These acts and other acts found by the Special Master from the uncontradicted evidence introduced by Louisiana are so overwhelmingly exclusive that there should be no doubt as to their efficacy for historic bay purposes, especially in an

indentation which would give the plain geographic connotation of an inland bay claim.

The true impact of note 30 of the Court opinion, 394 U.S. 11, at 26, pertaining to the effect of the allowance of innocent passage, is that it is incumbent upon the party contesting the assertions of jurisdiction to show that innocent passage was normally or frequently allowed, that is, that the waters which are the subject of the historic claim were an international route for traffic between parts of the high seas. Not only did the United States fail to show such a thing, but the character of East Bay precludes such a showing. No vessel would go into East Bay for the purpose of getting to another part of the high seas but would only use it, navigationally, to enter or exit inland waters. East Bay is not useful for innocent passage to connect parts of the high seas. Shallowness or configuration makes international passage between parts of the high seas in the areas impossible. The real significance of the innocent passage quotation from the *Juridical Regime* document is this: jurisdictional acts which have been rejected as ineffective to prove an *inland* historic title were in the context of significant innocent passage, or the subject of an express limiting declaration. *United States v. California*, 381 U.S. 139, at 171-173, discussion of the fact that the Santa Barbara channel served as an important route of international passage which precluded it from being classed as inland water; discussion of Coast Guard Line in *United States v. Louisiana*, 394 U.S. 11, at 27; and U.S. Exh. 99, at 66.

The Special Master's finding that Louisiana's evidence has merely territorial significance is inconsistent with many authorities which, as we have demonstrated on the basis of lesser evidence than the undisputed evidence presented by Louisiana, have recognized bays to be historic inland bays.

Thus, the authorities recognize that there was no question that when Delaware Bay and Chesapeake Bay were adjudicated to be historic bays, their waters became inland waters of the United States. Op. A. G. 32 [1852]. *Stetson v. United States*, No. 3993 Class 1, (2d Court of Commissioners of Alabama Claims). This is likewise true of Long Island Sound. At first Long Island Sound was not recognized by the United States State Department as an historic bay, but this was corrected by Mr. Leonard C. Meeker, Legal Advisor for the State Department, in his letter to Mr. Erwin N. Griswold, Solicitor General, dated April 8, 1969.[27] When Long Island Sound was recognized as an historic bay, no question was raised about its waters being inland waters of the United States. See U. S. Exhibit 108.[28]

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[27] U. S. Exhibit 108.

[28] The finding by the Special Master that East Bay is an historic territorial bay means the Special Master determined (1) Louisiana had claimed title to and exercised sovereignty over the bay; (2) Louisiana had continued to exercise this sovereignty over East Bay, and (3) foreign states had acquiesced in these acts of sovereignty. Although there was no evidence of any foreign national using East Bay for navigation purposes, and Louisiana required foreigners to secure fishing

The United States does not now dispute authority of a state exercising sovereignty over bays to claim historic waters. *Juridical Regime*, 80. What kind of acts constitute "sovereignty" ? The United States contends that the requisite exercise of sovereignty must consist of acts directed against foreigners. The only evidence in the record on this subject is that introduced by Louisiana, which establishes that Louisiana's enforcement policies in East Bay were directed both against nationals and foreigners alike. The United States did not offer one scintilla of evidence to establish that foreigners used East Bay without complying with the laws, rules and regulations promulgated by Louisiana for fishing, hunting and exploring for minerals in these waters. Certainly if there was such evidence, the United States, with its vast resources, would have produced it.

Recognizing that sovereignty must be effectively exercised by deeds and not merely by proclamations,

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licenses before fishing in East Bay, the Special Master determined that the only element lacking was failing to interfere with the innocent passage of ships of foreigners in East Bay.

All historic bay closures claimed by Louisiana including those of East Bay and Caillou Bay, have a width in excess of 6 miles. Thus, claims that they enclosed territorial sea rather than inland waters, would be inconsistent with the repeatedly asserted United States position that it has never claimed a territorial sea in excess of three miles. Foreigners would have therefore understood exercises of jurisdiction as being clearly inland in character, for United States policy as to inland waters was not restricted by a three mile limit, certainly not as to historic bays.

the writers of the *Juridical Regime* stated:

> This does not, however, imply that the State necessarily must have undertaken concrete action to enforce its relevant laws and regulations within or with respect to the area claimed. It is not impossible that these laws and regulations were respected without the State having to resort to particular acts of enforcement. It is, however, essential that, to the extent that action on the part of the State and its organs was necessary to maintain authority over the area, such action was undertaken. *Juridical Regime* 99.

The absence of foreign vessels (except those who recognized Louisiana's sovereignty by the purchase of licenses from Louisiana) and Louisiana's policy of enforcing its laws and rules in the waters of East Bay against nationals and foreigners alike satisfy this pronouncement. In discussing the kind of authoritative acts the State must exercise, the author of the *Juridical Regime* document stated:

> Suppose. . . that the State has *continuously asserted that its citizens had the exclusive right to fish in the area*, and had, in accordance with this assertion, kept foreign fishermen away from the area or taken action against them. In that case the State in fact exercised sovereignty over the area, and its claim, on a historical basis, that it had the right to continue to do so would be a claim to the area as its "historic waters". The authority exercised by the State would be commensurate to the claim and would form a valid basis for the claim (without prejudice to the condition that the other requirements for the title must also

be fulfilled). *Juridical Regime* 86.[29] [Emphasis added].

The author went on to quote the opinions of prominent and internationally recognized writers on the subject. Gidel, in discussing the acts by which authority is exercised, stated:

> "It is hard to specify categorically what kind of acts of appropriation constitute sufficient evidence: *the exclusion from these areas of foreign vessels or their subjection to rules imposed by the coastal State which exceed the normal scope of regulations made in the interests of navigation would obviously be acts affording convincing evidence of the State's intent.* It would, however, be too strict to insist that only such acts constitute evidence. In the Grisbadarna dispute between Sweden and Norway, the judgment of 23 October, 1909 mentions that 'Sweden has performed various acts. . . owning to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty.' " *Juridical Regime* 89. [Emphasis added].

Bourquin, another writer, agreed and stated:

"What acts under municipal law can be cited

[29] See Deposition of Captain Schouest on the armed patrols commencing in 1919, and how the Japanese and other foreigners honored them. Appendix I, at 158. See also depositions of other law enforcement officers. Appendix I, at 154-162.

> as expressing its desire to act as the sovereign? That is a matter very difficult, if not impossible, to determine *a priori*. There are some acts which are manifestly not open to any misunderstanding in this regard. The State which forbids foreign ships to penetrate the bay *or to fish therein indisputably demonstrates by such action its desire to act as the sovereign.*" *Juridical Regime* 90. [Emphasis added].

In the *Anglo-Norwegian Fisheries Case, United Kingdom v. Norway*, [1951] I.C.J. 116, Norway stated in its Counter-Memorial:

> "It cannot seriously be questioned that, in the application of the theory of historic waters, acts under minicipal [sic] law on the part of the coastal State are of the essence. Such acts are implicit in an historic title. It is the exercise of sovereignty that lies at the basis of the title. It is the peaceful and continuous exercise thereof over a prolonged period that assumes an international significance and becomes one of the elements of the international juridical order." *Juridical Regime* 93.

Clearly Louisiana's evidence meets the test set forth in the above-quoted portions of the *Juridical Regime*, an authority admitted by the United States to be controlling in this case. This Court has already decided that state acts may be considered in establishing sovereignty over inland waters.

The Court having recognized that the definition of historic inland waters is imprecise, Louisiana followed the teachings of this Court, as suggested in its

opinion, to determine if its historic inland waters would meet the international test. Louisiana called as a witness, Dr. Leo Bouchez, Associate Professor, Institute of Public International Law of the University of Utrecht, the Netherlands, who was recognized by this Court as an authority on the law of the sea, to testify what an international tribunal with appropriate jurisdiction would hold the customary international law to be in establishing inland waters.[30]

After Louisiana had introduced its evidence as to acts of sovereignty and jurisdiction exercised by Louisiana and United States over East Bay (summarized by the Special Master in his findings as Appendix B [Report, at 67-69]), Dr. Bouchez was then called as a witness. Dr. Bouchez was asked a hypothetical question, assuming facts established respecting East Bay substantially as the Master has found them to be. What would an international tribunal determine to be the legal rights of the adjacent state in the water and the subsoil of the area involved in the assumed facts?

Dr. Bouchez' opinion, expressed at page 992 of the transcript, was that such a hypothetical indentation would come under the regime of internal waters as fitting the historic bay doctrine.

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[30] Dr. Bouchez was recognized by the Court as an authority on historic inland waters. See United States v. Louisiana, 394 U.S. 11, at 22 n. 23, 23 n. 27, 27 n. 31, 76 n. 103. See La. Exh. 60 for an extensive history of Dr. Bouchez' expert qualifications in the field of international maritime boundary law.

This testimony is the opinion of a recognized expert in the field of the law of the sea, which field this Court has determined is imprecise. We respectfully urge that his expert opinion is entitled to great weight in this proceeding.

Louisiana Need Not Show Actual Formal Acquiescence by a Foreign Government in Order to Establish its Historic Bay Claims

In a further effort to defeat Louisiana's claim, the United States argued that Louisiana must show actual acquiescence by foreign governments to establish an historic bay claim even though no foreign government has ever protested the acts of sovereignty exercised over East Bay by Louisiana and the United States. While some proponents of the theory of acquiescence require proof of express consent of other States, it is generally agreed that "inaction" of those States in favor of a line of conduct of a coastal State would be sufficient. Thus, Sir Gerald Fitzmaurice admits that the argument of the United Kingdom in the *Fisheries Case* was really limited to the contention that:

> the true role of the theory [of historic rights] is to compensate for the lack of any evidence of express or active consent by States, by creating a presumption of acquiescence arising from the facts of the case and from the inaction and toleration of States. But of course it is still this presumed acquiescence, not the usage *per se*, which creates the right. Moreover, the historic element only creates a *presumption* of acquiescence. It

remains open to any State against which the claim is invoked to rebut this presumption if it can, and to show that in all the circumstances it cannot be held to have consented. [Fitzmaurice, "The Law and Procedure of the International Court of Justice, 1951-54; General Principles and Sources of Law," 30 British Year Book of International Law (1953), p. 1, at 29-30. See also McGibbon, "The Scope of Acquiescence in International Law," 31 *idem* (1954), p. 143.]

As Bourquin puts it, what matters is whether the reactions of other States "interfere with the peaceful and continuous exercise of sovereignty" by a coastal State to the point of divesting it of its chance to establish an historical title. "Obviously only acts of opposition can have that effect. So long as the behavior of the riparian State causes no protest abroad, the exercise of sovereignty continues unimpeded." Acquiescence is not necessary; the "absence of any reaction by foreign States is sufficient." Bourquin, "Les baies historiques," *Melanges Georges Sauser-Hall* (1952), p. 37, at 46.

Consequently, the United Nations study suggests the abandonment of the term "acquiescence" and the use instead of the term "toleration" (used also by the International Court of Justice in the *Fisheries Case*, [1951] I.C.J. 116, 138-39). *Juridical Regime* 111. Such toleration ceases, if other States actually lodge an effective protest against the claim asserted by the coastal State. To stop acquisition of a title, the opposition must be sufficiently strong, both in the effectiveness of the protest and the number of States opposing the

claim. What is an effective protest depends on the circumstances of the case, but an isolated protest by one State only is certainly not sufficient. While the coastal State has to prove the basis of its claim, a State opposing such a claim would have to prove that there has been sufficient opposition to nullify the claim. It cannot be said that the whole burden of proof is on the coastal State. There is no basis for the argument of the United States that only actual expressed acquiescence by a foreign nation must be established before an historic bay claim can ripen.

The principle previously discussed that water bodies once inland remain inland, accords with the Supreme Court opinion, for it is derived from historical geographical reasoning. Nor does the principle conflict with the ambulatory commentary of the Supreme Court, if mechanistic literalism is avoided and context considered. That ruling was *not* in the context of Mr. Miller's point that water bodies, whether straits, sounds or bays, remain subject to the jurisdiction of a State once they fall under the jurisdiction of a State. Surely the Supreme Court has recognized that no amount of geographic change of the shoreline in an historic bay will change its legal status, since *continued* legal status is not *dependent* on *precise* present geography.

> . . . [O]ther areas of water closely connected to the shore, although they do not meet any precise geographical test, may have achieved the status of inland waters by the manner in which they have been treated. . . 394 U.S. 11, at 23.

A fortiori, if waters *had* formerly met precise geographical tests and had *also* been treated as a bay, failure to *continue* to meet precise geographic tests would be immaterial. Thus, the doctrine is traceable to this Court's language. Mr. Miller at the Hague was not speaking of mere changes of shoreline and related three-mile projections from the shoreline; Mr. Miller was speaking of geographic entities *not* changing status.

The Holding that the United States had Effectively Disclaimed Louisiana's Historic Bays so that Louisiana Would Have to Prove Its Historic Claim "Clear Beyond Doubt" was in Error

The question after 1948, when the United States made its oil claims for East Bay as against Louisiana, is not whether thereafter *the federal government* continued to recognize the bay, for this Court said:

> It would be [impermissible] to allow the United States to prevent recognition of a historic title which may have already ripened because of *past* events but which is called into question for the first time in a domestic lawsuit. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in *United States v. California. United States v. Louisiana*, 394 U.S. 11, at 77 n. 104.

The Special Master relied on evidence after Louisiana's title had already vested by past events to establish the United States disclaimed East Bay as an historical bay. The acts of disclaimer were urged by the United States to require proof by Louisiana beyond

reasonable doubt. Other than the filing of this litigation in 1949, the remaining acts of disclaimer asserted by the United States took place, commencing in 1969, long after this litigation was under way and consisted only in letters from a federal official to another covering this litigation. This is evident by the Special Master's findings to this effect:

> The United States has disclaimed any intention on its part of seeking to establish any inland waters along the coast of the State of Louisiana on historic principles. In fact, the very filing of the present suit and its vigorous prosecution itself constitutes such a disclaimer. In a letter dated April 8, 1969 from Leonard C. Meeker, Legal Advisor, Department of State to Erwin N. Griswold, Solicitor General, Department of Justice (U.S. Exhibit 108) it is stated:
>
> "We are not aware of any foreign waters which have been recognized as historic by the United States."
>
> In a later letter dated April 4, 1970 from John N. Mitchell, Attorney General of the United States, to William P. Rogers, Secretary of State of the United States (U.S. Exhibit 114) it is further stated:
>
> "[T]he Department is unaware of any evidence regarding a claim by the United States Government of historic bays in any other area which would not now qualify as a legal bay under Article 7, paragraphs 1-5, of the Convention on the Territorial Sea and the Contiguous Zone."

In April 1971, the United States published a set of 155 maps delimiting the three mile territorial sea, the nine mile contiguous zone and certain internal waters of the United States, including the boundaries for the entire coast of Louisiana (U.S. Exhibit 416D). These maps are available for sale to the general public and have been distributed to foreign governments in response to requests to the United States Department of State for documents delimiting the boundaries of the United States. As shown thereon, those boundaries are entirely consistent with the position taken by the United States in this litigation, and do not include any historic bays along the coast of Louisiana which would not otherwise qualify as juridical bays. Report, at 16-17

The United States is urging this disclaimer of inland waters along Louisiana's coast, including East Bay, so as to advance its unsound argument that Louisiana's claim of historic bays must be proved by evidence "clear beyond doubt." In the first place, there was no disclaimer by the United States before this litigation in 1949. In addition, the acts relied on by the Special Master are not clear disclaimers of historic waters.

In the letter from Leonard C. Meeker, Legal Adviser, Department of State, to Erwin N. Griswold, Solicitor General, dated April 8, 1969, Files, Department of State (U. S. Exhibit 108), Mr. Meeker suggested that the United States respond to Interrogatory #10 of Alaska as follows:

> "The United States does not recognize as historic any bays with closure lines exceeding 24 miles. Prior recognition of historic water such as Delaware Bay, Chesapeake Bay, and perhaps Long Island Sound are now irrelevant since all these bodies of water would now be inland under the 24-mile closure rule. We are not aware of any foreign waters which have been recognized as historic by the United States."

Note that none of the historic closures claimed by Louisiana exceed 24 miles. He continued his letter:

> It has now come to my attention that on December 8, 1879, commissioners of New York and Connecticut executed an agreement drawing a common boundary between those two States through Long Island Sound, which was ratified by the legislatures of both States and was approved by Congress. Act of February 26, 1881, 21 Stat. 351. This Congressional action supplies the element of formal governmental assertion that I previously supposed to be dubious, *and leaves unquestionable the status of Long Island Sound as historic inland waters. The status of the Sound as "historic" has never been disputed.* Cf. Jessup, The Law of Territorial Waters and Maritime Jurisdiction (1927) 224-227; 4 Whiteman, Digest of International Law (1965) 237, 241-242. This makes it unnecessary to consider the applicability of a 24-mile closing line under Article 7 of the Convention on the Territorial Sea and the Contiguous Zone. [Emphasis added].

Then, at the end of the letter, he stated:

> I suggest that the United States' responses

to Alaska's interrogatories should be amended to reflect the foregoing.

This letter does not purport to disclaim any historical inland waters along the coast of Louisiana. It states that the United States does not recognize as historic any bays or closing lines exceeding 24 miles and that the writer is not aware of any foreign waters which have been recognized as historic by the United States. Mr. Meeker then went on to recognize that although he initially stated that Long Island Sound was not historic waters, he has now determined that it is historic waters and that the status of Long Island Sound as historic inland waters *has never been disputed.*[31]

The next document cited is a letter from Leonard C. Meeker, Legal Adviser, Department of State, to Shiro Kashiwa, Assistant Attorney General, dated July 3, 1969, Files, Department of Justice (U.S. Exhibit 109). This letter merely related to Cook Inlet. In this connection Mr. Meeker said:

> In its conduct of United States foreign relations the Department of State does not consider that Cook Inlet is a historic bay. On the basis of the foregoing, it is my opinion that Cook Inlet should not be considered a historic bay.

[31] In spite of this statement by Mr. Meeker, the United States is now urging "Louisiana must prove that foreign nations have acquiesced in the alleged claim." Post-trial Brief for the United States before the Special Master, United States v. Louisiana, No. 9, Original, 1971, at 78. No such proof is required, as admitted by Mr. Meeker in his letter of April 8, 1969.

Since this purported disclaimer only related to Cook Inlet, it was not a disclaimer of historic inland waters off the coast of Louisiana.

In his memorandum and order in *United States v. Alaska*, U. S. District Judge von der Heydt,[32] in commenting on this disclaimer by Mr. Meeker of the State Department, had this to say:

> The disclaimers in the instant case approach the impermissible contraction of authority cautioned against by the Supreme Court, especially in view of the clear evidence of continuous assertions of sovereignty over lower Cook Inlet. Considering the circumstances under which they were prepared, the Court assigns a low reliability factor to the disclaimers. The first disclaimer was a letter from the Legal Advisor to the Secretary of State. The Court finds the evidence to show the disclaimer to have been hastily prepared and based on questionable research. The second disclaimer was also a letter from the State Department. That disclaimer was prepared two years after the commencement of this action and was vulnerable to self-serving interests. *United States v. Alaska*, 352 F. Supp. 815 (1972), at 818-819.

The next document referred to is a letter from John N. Mitchell, Attorney General, to William P. Rogers, Secretary of State, dated January 30, 1970, Files, Department of State (U.S. Exhibit 110), in which it is stated:

[32] Judge von der Heydt found Cook Inlet an historic bay. His opinion has been affirmed by the 9th Circuit Court of Appeals and writs of certiorari have been applied for by the United States to this Court. United States v. Alaska, 497 F.2d 1155 (1974).

In formulating our positions on these matters we have been in close contact with the office of the Legal Adviser. As a result, we have taken the position that neither East Bay, nor Isle au Breton Bay, nor Caillou Bay is historic inland waters of the United States and that the United States has not drawn straight baselines on the Mississippi River Delta or at Caillou Bay.

In his reply to that letter, William P. Rogers, Secretary of State, wrote to John N. Mitchell, Attorney General, on April 14, 1970, Files, Department of State (U.S. Exhibit 114):

With respect to the questions raised in your January 30 letter, the territorial sea of the United States is measured in strict conformity with the provisions of the Convention on the Territorial Sea and the Contiguous Zone. The United States Government has taken no action to establish a system of straight baselines pursuant to Article 4 of that Convention or customary international law with respect to any area along its coast. Regarding historic bays, the Legal Adviser, by letter dated February 20, 1969, to the Solicitor General, has already expressed his opinion on the status of Long Island Sound. The Department is *unaware* of any evidence regarding a claim by the United States Government of historic bays in any other area which would not now qualify as a legal bay under Article 7, paragraphs 1-5, of the Convention on the Territorial Sea and the Contiguous Zone. It has, for example, found no such evidence with respect to the area mentioned in your letter. [Emphasis added].

This statement by the Secretary of State cannot be treated as a disclaimer of any historic inland waters along the Louisiana coast. The only thing the Secretary of State is saying is that the United States has not established a system of straight baselines along the coast of Louisiana under Article 4 of the Convention which was adopted in 1961, and he is unaware of any evidence regarding claims *by the United States* of historic bays in any other area which would not qualify as a legal bay under Article 7. The Secretary of State then referred to the original letter from the Legal Adviser of the State Department to the Solicitor General, dated February 20, 1969, in which, at that time, the Legal Adviser had stated that Long Island Sound was not historic inland waters. This was later corrected by the letter of April 8, 1969 (U.S. Exhibit 108), which we have already quoted. There the Legal Adviser stated that from additional research, he had determined that Long Island Sound was unquestionably historic waters. The letter was couched in terms so as not to act as a disclaimer in the event the evidence justified such historical inland waters.

The Master then refers to a set of 155 maps delineating the three-mile territorial sea, dated in April, 1971, and introduced over the objection of Louisiana as U. S. Exhibit 416D. These maps were prepared by the United States during the trial of this case and after Louisiana had put on the majority of its evidence.

These maps carried the following legend:

CAUTION
THIS DOCUMENT IS NOT FOR USE IN NAVIGATION

The lines drawn on this document delimit provisionally the territorial sea, contiguous zone, and certain internal waters of the United States. They have been prepared by an interdepartmental committee and represent its interpretation of relevant legal principles as applied to the geographical information shown on a Coast and Geodetic Survey nautical chart which has been used as a base. These lines are subject to revision whenever it is required by amplification or correction of the information shown on the chart or by reinterpretation of the legal principles involved. This document does not attempt to delineate international boundaries and is not to be understood as asserting or implying where they are located.

Judge von der Heydt, in the *Alaskan* case, in his findings of fact and conclusions of law, dated the 29th day of January, 1973, found the disclaimers advanced by the United States in that case ineffective, for he stated:

> 103. The so-called disclaimers relied upon by the United States government are ineffectual because (a) they are refuted by historic evidence, referred to above, which is clear beyond doubt; (b) they were hastily prepared, based on questionable research, and offered in a self-serving effort by the federal government to have the Court disregard historic facts; and (c) came at a time when historic title had already ripened into ownership of the disputed area of Cook Inlet.

104. The background investigation pertaining to the letter from Abram Chayes to Frank J. Barry dated May 3, 1962 was done by a staff assistant in the Office of the Secretary of State's Legal Advisor. The investigation was limited to records of the State Department. (Exhibit 58; Chayes' depos. pp. 5-12; Yingling's depos. pp. 5-12; 15-16; 18-21)

105. The background investigation pertaining to said letter was inadequate in that: (a) not all of the records of the State Department or other departments necessary to form an adequate basis for the conclusions contained in said letter were searched; (b) an adequate investigation would have required research by one person of at least three months, whereas in fact, the one person assigned to the project took only six days. (Simon's depos., pp. 54-55; Exhibits HT; HT-1; Alaska's 11th Set of Interrogatories No. 4)

106. The conclusions contained in the letter from Leonard Meeker to Shiro Kashiwa, dated July 3, 1969, were based on no research other than that referred to above, plus an insignificant amount of additional research. (Carter's depos., pp. 6-11)

107. The charts depicted by Exhibit 73 were drafted by the Law of the Sea Baseline Committee at a time when this case was pending in this court. Among the members of that committee at the time was the principal attorney for the United States in this litigation. Said exhibit cannot be said to be an unbiased product. (Hodgson's depos., pp. 10-15; Exhbits HY, HX, IB, IC, IC-1)

108. The background factual research per-

taining to Exhibit 73 was based upon no information other than that referred to in Findings 104-106. (Hodgson's depos., pp. 6-7; 44-45; 48-49)

109. Contrary to the position now advanced by the United States in lower Cook Inlet, the Baseline Committee determined Long Island Sound to be historic waters of the United States in the absence of a declaration by the Executive Branch to that effect. The Baseline Committee failed to discuss, in its deliberations, the possible historic status of Cook Inlet and it is clear such committee did not have before it the evidence which has been presented to this Court (Hodgson's depos., pp. 49, 151-153; 157-159; Exhibit HX).[33]

Even if the Court considers the documents as disclaimers, such disclaimers, under this Court's holding, cannot now divest Louisiana of title to inland waters already vested in 1948.

This Court said:

> The only fair way to apply the Convention's recognition of historic bays to this case, then, is to treat the claim of historic waters as if it were being made by the national sovereign and opposed by another nation. 394 U.S. 11, at 77.

The government attempted to nullify this language by the argument that historic waters are based upon sovereignty; that only the United States Government has sovereignty; and so it is impossible for a State

[33] Finding of Facts and Conclusions of Law by Judge von der Heydt. Appendix "C" to petition for writ of certiorari to the United States District Court of Appeal for the Ninth Circuit No. 73-1888, p. 46(a).

to have historic waters not claimed to be such by the United States.[34] We consider the argument quite unreasonable, especially in the light of the statement by the Court. Clearly, the matter of national sovereignty based on State action may not be disputed by the United States to defeat the historic claims already vested in Louisiana. Nor is the assertion of the United States that the claims must be proved "*clear beyond doubt*" valid. The italicized words are lifted out of context and are *clearly not within the concept of the reference by the Supreme Court to the Special Master.* The Court said that in the *California* case it had noted at page 175:

> . . . we were "reluctant to hold that such a disclaimer would be decisive in all circumstances, for a case might arise in which the historic evidence was clear beyond doubt." 394 U.S. 11, at 77.

But the Court certainly did not make the test one of "clear beyond doubt," nor did it leave the matter to the wish of the executive department of the government, for the Court said:

> Thus, the Court indicated its unwillingness to give the United States the same complete discretion to block a claim of historic inland waters as it possesses to decline to draw straight baselines.

[34] To sustain this statement, the United States cites the cases of Jones v. United States, 137 U.S. 202, at 221; Pearcy v. Stranahan, 205 U.S. 257, at 265; and Vermilva-Brown Co. v. Connell, 335 U.S. 377, at 380. We do not disagree with the holding in these cases, but they are not applicable here, for the Court, in its opinion, has interpreted the provisions of the Convention and has determined the criteria on which the Speical Master is to consider this case.

Whiie we do not now decide that Louisiana's evidence of historic waters is "clear beyond doubt," neither are we in a position to say that it is so "questionable" that the United States' disclaimer is conclusive. *Ibid.*

In commenting on the burden of proof in the *Alaska* case, Judge James A. von der Heydt said:

> The final qualification concerns the quantum of proof required for a showing of historic title. The expression "clear beyond doubt", as it first appeared in United States v. California, 381 U.S., at 175, 85 S.Ct. 1401, could very well not have been intended by the Supreme Court to establish such a high standard of proof in all cases. The context in which that phrase appeared pertained to the legal effect of a disclaimer by the United States in the face of questionable evidence of historic title. The context of this case is clearly distinguishable. Further, there is other language in that case which implies that no rigorous standard of proof is required to prove historic title. 381 U.S., at 174, 85 S.Ct. 1401. Nor do the long respected commentators of international law appear to require a rigorous standard of proof. Juridical Regime 1581. Despite this uncertainty over the burden of proof, this Court will adhere to the higher standard of proof, for the reason the Court finds the State of Alaska has satisfied the requirements for establishment of historic title even under the more rigorous standard.[35]

Louisiana agrees with Judge James A. von der Heydt, in the *Alaskan* case, that the Court did not in-

[35] United States v. Alaska, 352 F. Supp. 815, at 819.

tend to establish such a high standard of proof that would meet the test "clear beyond doubt." Even if it were the intent of the Court to establish such a rigorous standard, Louisiana's evidence meets such a standard and we urge that the Court find that East Bay is an historic bay containing inland waters landward of a closing line from X=2,697,850, Y=117,200 to X=2,609,180, Y=91,445.

SECOND EXCEPTION

OTHER HISTORIC BAYS

The State of Louisiana further excepts to the Special Master's conclusions that the waters treated by Louisiana as inland historic waters in the remaining Mississippi River Delta and Caillou Bay are not now historic inland waters, but are part of the territorial sea or high seas, notwithstanding his finding that the facts presented by Louisiana are undisputed and must be taken as true.

MISSISSIPPI DELTA BAYS

It is conceded the other bays in the Mississippi Delta are juridical bays, the only dispute being the proper headlands from which to draw the closing lines. It is Louisiana's position that these bays are historic bays to their outermost headlands. We must remember, Louisiana's title to these bays from "an imaginary line joining outermost mudlumps and other features marking the seaward terminus of the bays" [36] was not disputed by the United States until 1948.[37]

Our argument in this brief demonstrating that East Bay is an historic bay applies in large measure to these other Mississippi Delta bays. We will not repeat such argument in this section of the brief.

What areas would the United States and Louisiana have a greater interest in maintaining as part of the inland waters of the United States than the bays

[36] Report, Finding of Fact No. 6, at 68.
[37] Report, Finding of Fact No. 16, at 69.

formed by the delta of the great Mississippi River?

There was no question about the inland character of these waters before 1948. This was only three years after the Truman Proclamation of 1945 in which the United States asserted ownership to the minerals in the Continental Shelf. Even though the United States would gain title to minerals by restricting the inland waters in the Mississippi Delta, it is of even greater importance to maintain the inland waters claimed by Louisiana prior to 1948 in the delta for it is from the gulfward limits of the inland waters that the territorial sea and fishing zones are measured. The protection of the delta from foreign nationals is of prime importance and should override any attempt by the United States to weaken the protection of this area by now trying to disclaim inland waters, title to which vested in Louisiana prior to 1948. Louisiana's title was asserted long before oil was discovered.

The findings of fact by the Special Master (Report, at 67-69) relate in most part to the total Mississippi Delta area.[38] This is also true of the Tern Islands Reservation, Inland Water Lines, charts of this Court in the Mississippi-Louisiana case, and Proudfoot, *Measurement of Geographic Area.* These acts of sovereignty in the delta area are discussed in detail at pages 178, 182-184 of Appendix I. As to the remaining bays of the delta, we respectfully urge that the Court should

[38] See Appendix I, at 172-184 for a detailed discussion of and transcript references to the evidence sustaining Louisiana's position.

adopt closing lines enclosing the historic waters of the bays as follows:

(1) Isle au Breton Bay—The closing line for the historic waters of Isle au Breton Bay is a line from X=2,737,288, Y=345,654 to X=2,755,325, Y=204,680.

(2) Blind Bay—The closing line for the historic waters of Blind Bay is a line from X=2,751,045, Y=181,305 to X=2,726,105, Y=148,530.

(3) Garden Island Bay—The closing line for the historic waters of Garden Island Bay is a line from X=2,724,850, Y=148,150 to X=2,702,461, Y=124,148.

(4) West Bay—The closing line for the historic waters of West Bay is a line from X=2,607,290, Y=93,040 to X=2,590,100, Y=203,860.

Additionally, as treated in the discussion of *The "Anna" infra*, p. 117-18, the mudlump island groupings enclose historic inland waters, which form part of the mainland, both juridically and geographically.

CAILLOU BAY

Caillou Bay has been treated as a juridical and historic bay by Louisiana from its admission into the Union in 1812 to the present date. Caillou Bay has been designated as a bay on maps since that date. When Act 52 of 1904 and similar prior and subsequent acts were passed by the Louisiana Legislature whereby Louisiana claimed title to the beds and bottoms of all bays on the Gulf, Caillou Bay was such a bay and title was there again reaffirmed in the State of Louisiana. Louisiana's title to Caillou Bay was not called into

question in this domestic litigation until 1968[39] when the United States, in the Proposed Supplemental Decree No. 2 and its Memorandum in Support Thereof, urged that Caillou Bay was not a juridical or historic bay and that part of the waters of Caillou Bay, formerly recognized by the United States as being the inland waters of Louisiana, was part of the open sea. 394 U.S. 11, at 73 n. 97.

Louisiana's title to Caillou Bay as inland water, both as a juridical bay and an historic bay, was vested long prior to being called into question in this litigation in 1968, long after Louisiana's title to East Bay was called into question in 1948.

The Special Master, after hearing all of the evidence in this case, stated:

> In the absence of such a holding[40] the Special Master would upon the evidence presented before him

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[39] The United States recognized Caillou Bay as inland waters and Louisiana continued to lease Caillou Bay for oil, gas and mineral purposes. The moneys received from these oil operations were excluded from the 1956 Interim Agreement between the United States and Louisiana since it was recognized that the waters of Caillou Bay belonged to the State of Louisiana. It is only in 1968, when the United States changed its position, that it is now claiming a portion of Caillou Bay is the open sea and that some of the moneys received by Louisiana should be paid to the United States under the Outer Continental Shelf Lands Act. This change in position will prejudice Louisiana since it will have to account for funds long recognized by the United States as belonging to Louisiana, and should create an estoppel against the United States. This late change in position has prejudiced Louisiana. See discussion of the surveying prejudice, *infra* at 148-150.

[40] United States v. Louisiana, 394 U.S. 11, at 67 n. 88.

be inclined to hold that based upon their size, proximity, configuration, orientation and nature these islands would constitute an extension of the mainland and would therefore hold that Caillou Bay is a juridical bay with a closing line between points at coordinates X=2,117,317, Y=143,491 and X=2,076,201, Y=189,799. This would appear to be in accord with the view of the Special Master in the case of *United States v. Florida*, No. 52 original, in regard to certain of the Florida keys. Report, at 50-51.

This holding of the Master was based on the statement of the Court

> Louisiana does not contend that any of the islands in question is so closely aligned with the mainland as to be deemed a part of it, and we agree that none of the islands would fit that description. 394 U.S. 11, at 67 n. 88.

Louisiana respectfully states that the positions attributed to it in the above note were based on incomplete evidence and before evidence was introduced in the trial before the Special Master. Substantial evidence was introduced by both Louisiana and the United States, which formed the basis of the conclusion reached by the Special Master. Caillou Bay is an historic bay as well as a juridical bay.

Many of the acts found by the Special Master as acts of sovereignty exercised by Louisiana (see Report, Findings of Fact, at 67-69) apply to Caillou Bay.

We refer the Court to pages 184 to 210 of Louisiana's Appendix I to this brief for a more detailed discussion of Louisiana's historic claim to Caillou Bay.

For the past twenty-eight years (1940 to 1968), the water body known as Caillou Bay was explicitly recognized by the United States as inland waters. This was prior to the inception of and during the bulk of the submerged lands litigation. Caillou Bay was treated as inland waters by the Department of Commerce in 1940 for the purpose of taking the census of the United States (Appendix I, at 192). This was likewise true of the map prepared by the United States on August 26, 1950, after the inception of this lawsuit in 1948 showing "the most landward line that the Government would claim for the Federal-State boundary" (Appendix I, at 191 and 192). The evidence establishes that Caillou Bay has exhibited a configuration and characteristics sufficiently bay-like to have been considered a bay on maps and charts for over 130 years, and that the waters of Caillou Bay are completely surrounded by the lands and waters of Louisiana, except for the opening facing on the Gulf of Mexico and that various bayous and other tributaries entering Caillou Bay are entirely situated within the lands of Louisiana. Caillou Bay is well marked by headlands inside of which the mariner instinctively feels himself within the jurisdiction and dominion of Louisiana.

All of Caillou Bay's waters are such that they can easily be patrolled and protected by the government entity that has control of its shores, which in this case is Louisiana. The waters of Caillou Bay have been sufficiently enclosed to provide shelter for coastal craft and Caillou Bay has never been a waterway for intercourse

between nations. (Appendix I, at 203, 204) Louisiana has claimed title and sovereignty over Caillou Bay by various acts of the Louisiana Legislature as found by the Special Master (Report, Finding of Fact No. 13, at 69). Louisiana has enforced its fishing and hunting regulations over Caillou Bay from the early 1900's as found by the Special Master (Report, Findings of Fact, at 68 and 69). Louisiana has leased for oil and gas purposes the waters and water bottoms of Caillou Bay since 1928 and subsequent to the Truman Proclamation of 1945.[41]

Louisiana respectfully urges that the Court find Caillou Bay an historic bay with a closing line from X=2,117,317, Y=143,491 to X=2,076,201, Y=189,799, being the same closing line the Special Master recommends as a closing line for Caillou Bay as a juridical bay.

[41] See Appendix I from pages 184-210.

THIRD EXCEPTION

JURIDICAL EAST BAY

The State of Louisiana further excepts to the Special Master's failure to find that the portions of East Bay seaward of Closing Lines C and D satisfy the semicircle test: alternatively, the Report did not reflect dates when closing lines seaward of Lines C and D ceased to satisfy the test after 1918.

EAST BAY BEHIND LINE A HAS ALWAYS QUALIFIED AS A BAY

This argument is the first of several on exceptions which treat juridical bay questions. It pertains to East Bay, between Southwest Pass and South Pass of the Mississippi. Louisiana's primary juridical position is that a line (Line A)[42] using the outer natural[43] entrance points of the indentation both formerly and presently qualifies as a bay closing line. It has always so qualified, even more clearly in the past.

The Master noted that "it appears to be conceded that prior to 1918 it did so qualify." Report, at 27. See evidence summarized in Appendix I, at 129-132.[44]

[42] From X = 2,697,850, Y = 117,200 at South Pass to X = 2,624,995, Y = 108,700 at Southwest Pass as shown on La. Exh. 197.

[43] Article 7 requires use of natural entrance points. This Court's prior rejection of a closing line at East Bay involved use of a jetty as a headland for a line that failed to pass the semicircle test, due to the artificially widened mouth formed by a four-mile jetty. 394 U.S. 11, at 53.

[44] Appendix I is a document heretofore filed with the Master as explained *supra* in n. 10, which sought reconsideration of his draft Report, but which was rejected in globo without a point by point consideration of the largely uncontested

Evidence summarized, Appendix I, at 132-134, showed East Bay was a bay and fully treated as a bay between 1918 and the filing of this suit. La. Exh. 23 and 23A explained in the testimony of Dr. Morgan, tr. 388 *et seq.*, showed that the charts which existed at the time of and prior to the filing of this suit demonstrated that East Bay satisfied all bay tests, even the semicircle test using the extremely conservative method approved by the Master (Method 1). Appendix I, at 220-224, treating data on the configuration of East Bay on official large-scale charts of the United States during the period 1944 to 1956. The Convention requires use of such charts, Article 3.

Before discussing each closing line alternative claimed by Louisiana, it is well to note that this discussion, although intended for the juridical aspects of the case, reinforces Louisiana's historic claims.

This Court's careful choice of language in recognizing that historic bays *need not* conform to normal geographic tests was not a finding that they *must not* conform to normal geographic bay tests. Certainly, Delaware Bay and Chesapeake Bay are no less historic bays merely because they satisfy juridical or normal geographic standards. Rather, the language of the Court quoted *supra*, at 30-31, indicates historic bays must possess a geographic bay-like configuration, al-

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points made therein. Considered point by point, it required reversal of most of the rulings of the Report which rejected Louisiana's claims. We shall hereafter refer to it frequently, adopting material therein by reference, in the interest of brevity.

though they may have less than normal geographic bay characteristics. *A fortiori*, satisfaction of normal geographic bay standards for much of an indentation, even at present, is obviously a positive factor in favor of an historic bay finding. Also, satisfaction of the more stringent normal geographic standards in the past over an extensive time period quite obviously fortifies an historic bay claim. This is specially so when it is considered that the international community would have comprehended, even absent particular corporeal acts, that a coastal state continuously claimed inland authority as to a normal geographic bay. See discussion and authorities quoted at 30-36, 43-46 *supra* on historic bay requirements.

Line A and All Other Alternative Lines Satisfy the Semicircle Test by Use of the Article 7 Method of Including Islands and Waters Outside of the Low-Water Mark in the Area Measured

Louisiana's position that even after 1956, Line A qualifies to the present is predicated upon use of a semicircle test area measurement method which followed the direction of Article 7 of the Convention to use islands and follow the low-water line, thus using tributary waters. This Article states:

> 2. . . . An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semicircle whose diameter is a line drawn across the mouth of that indentation.
>
> 3. For the purpose of measurement, the area of an indentation is that lying between the low-

water mark around the shore of the indentation . . . . Islands within an indentation shall be included as if they were part of the water area of the indentation.

The principle of this Article is reflected in Figure 1.

Line A meets the objective semicircle test if the method of measurement prescribed by Article 7 (described as Method 3 in the proceedings before the Special Master) is followed. If the method provided in Article 7 is rejected in favor of more restrictive methods, Line A would not qualify but other lines between identifiable headlands would qualify. These lines were identified as Lines B, C, and D in the trial before the Master. The coordinate descriptions for these lines are reflected in La. Exh. 197. Further alternatives sub-

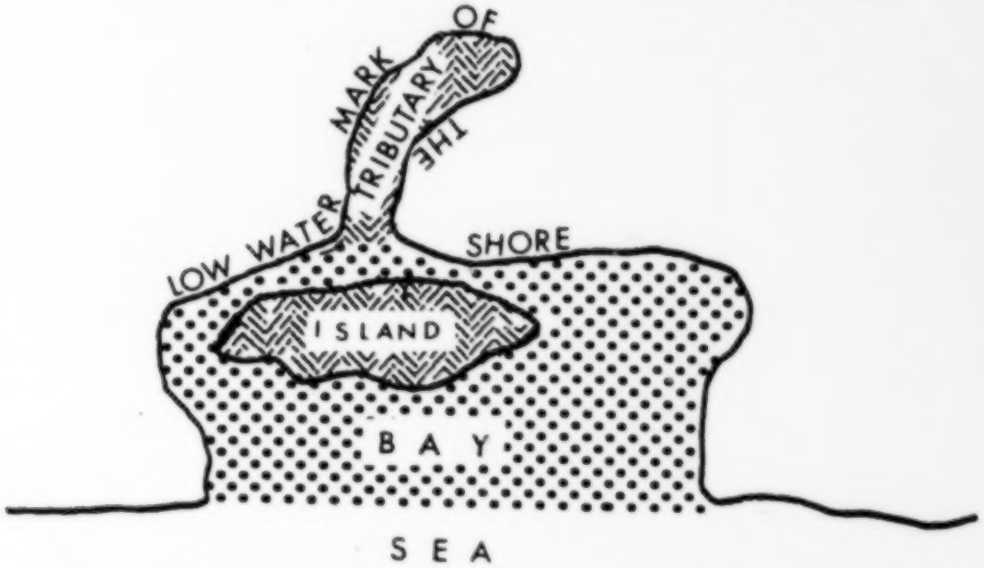

Figure 1. Illustration of Article 7 rule requiring use of tributary area outside of low-water mark of the shore, and use of island area for measuring area of the bay. Tributary and island areas would be added to water area of the bay for measuring bay area under the semicircle test.

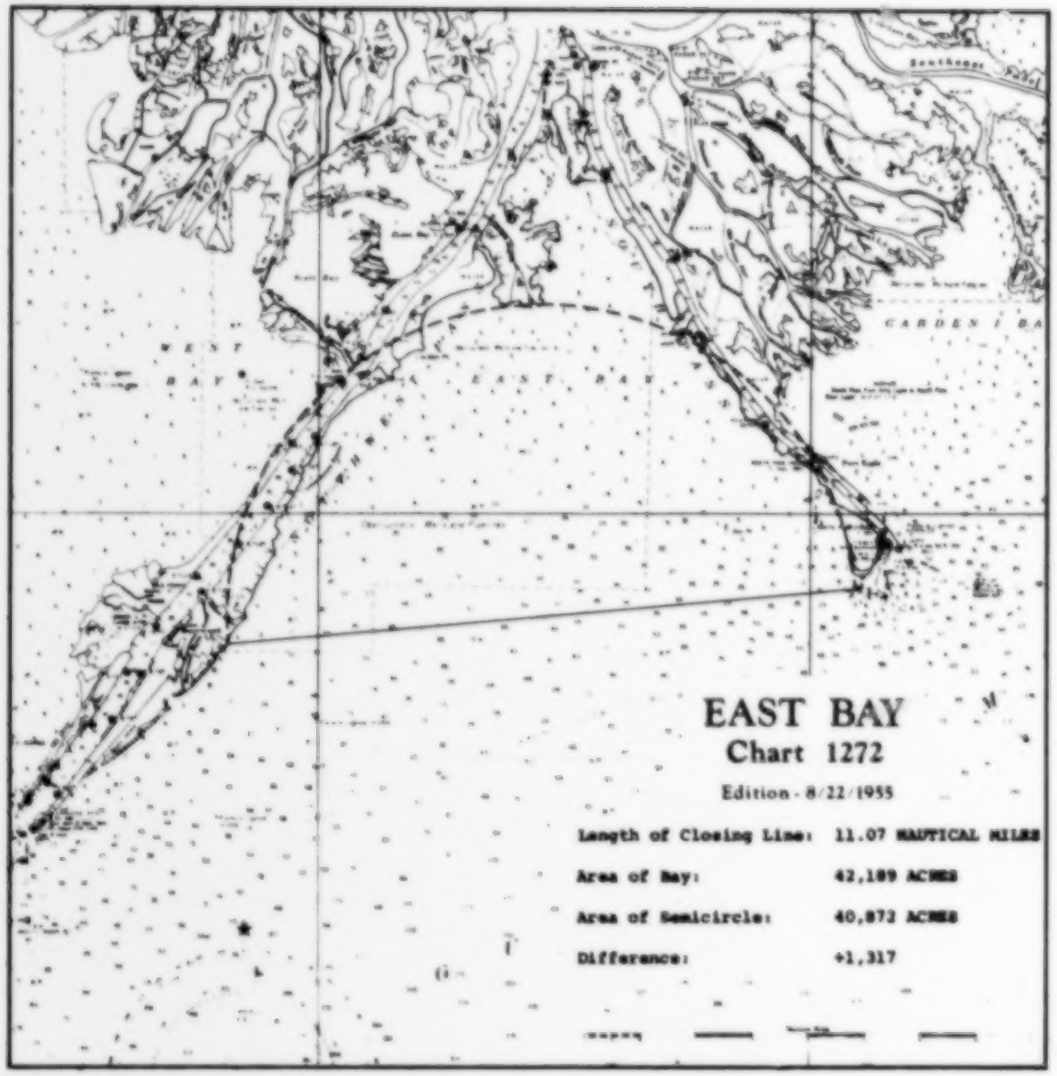

Figure 2. Portion of La. Exh. 23A showing semicircle test data for a juridical bay closure (approximating Closing Line A on La. Exh. 197) on the 9/22/55 edition of Chart 1272. Note that the method of planimetry reflected on the overlay for this chart in La. Exh. 23A is equivalent to Method 1, the system of excluding tributary waters and until this chart was changed in 1956, the bay qualified. (Details of the low-water line in the vicinity of Cowhorn Island did not reproduce. See original exhibit for full-size detail.)

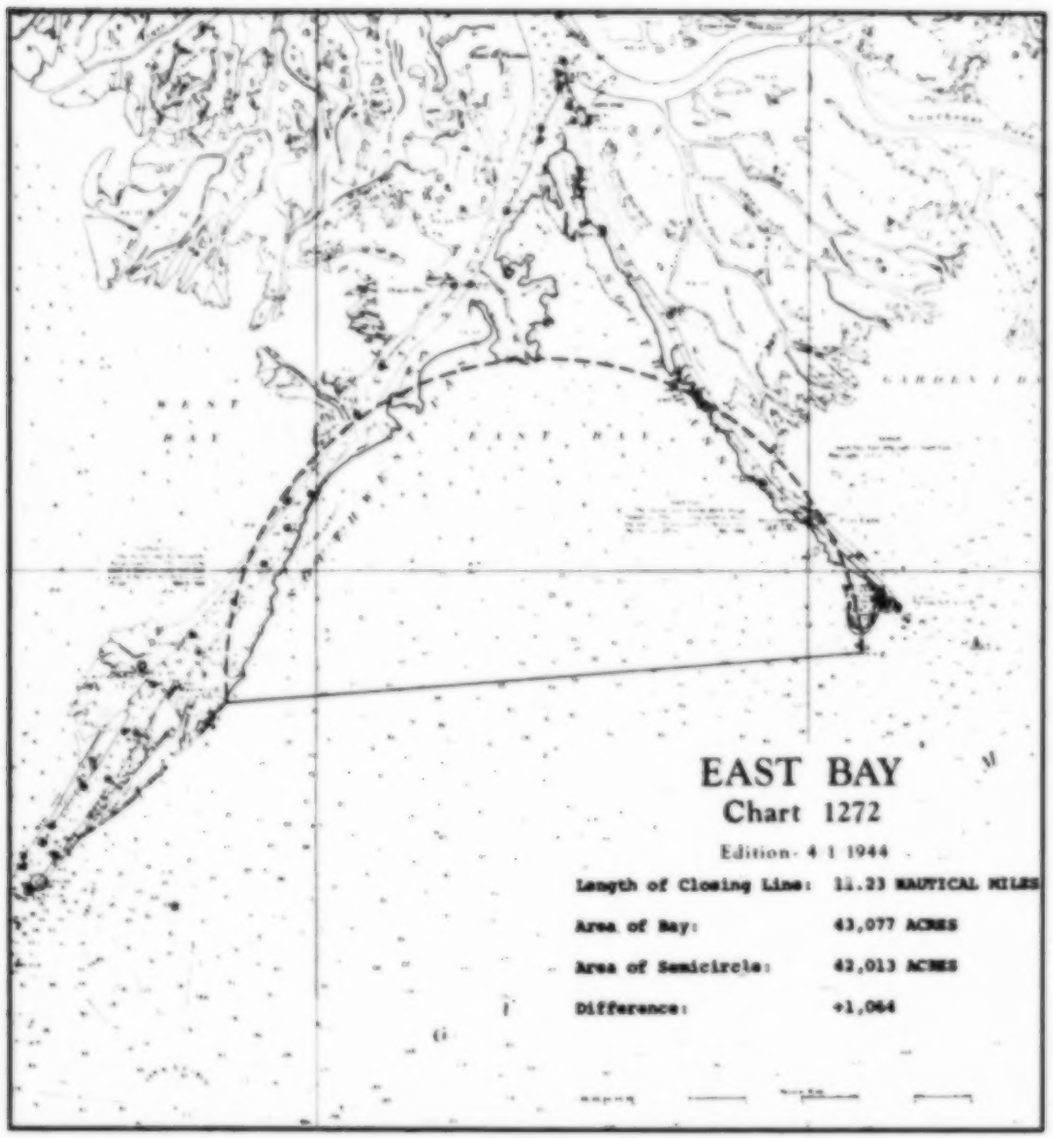

Figure 3. Portion of La. Exh. 23A showing semicircle test data for a juridical bay closure (approximating Closing Line A on La. Exh. 197 on the 4/1/44 edition of Chart 1272). This shows semicircle test data for Method 1 (approved by the Master on this chart configuration which was in effect from 1944 until 1955). Thus, on the initial accounting date, June 5, 1950, and on the 1953 date of the passage of the Submerged Lands Act, East Bay qualified as a bay. See full-size copy for low-water line detail which could not be effectively reproduced at this scale.

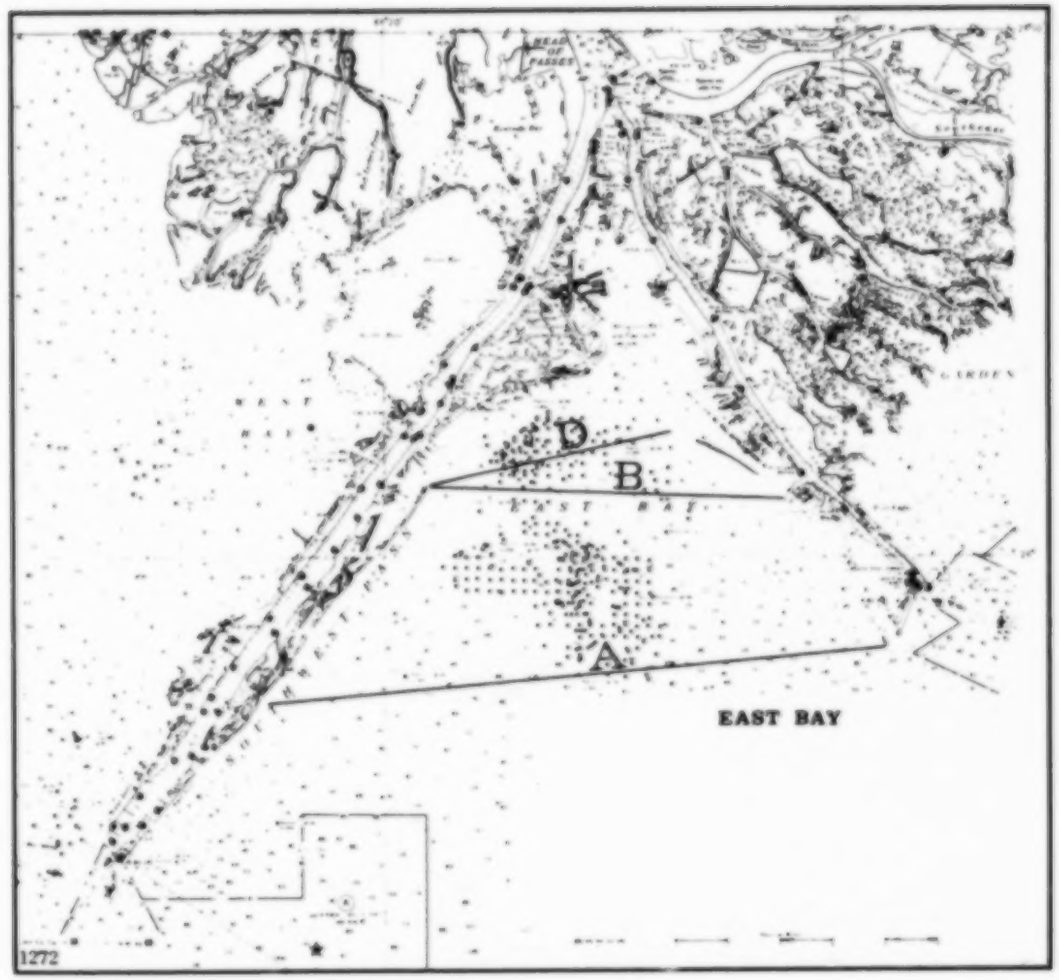

Figure 4. Reduced copy of Chart 1272 (12/6/69 edition—La. Exh. 296) showing the locations of Closing Lines A, B, and D from Exh. 197, using 1959 low-water survey configuration. See La. Exh. 197 for detail of low-water lines which could not be reproduced effectively at this scale, *e.g.*, at eastern terminus of Line D.

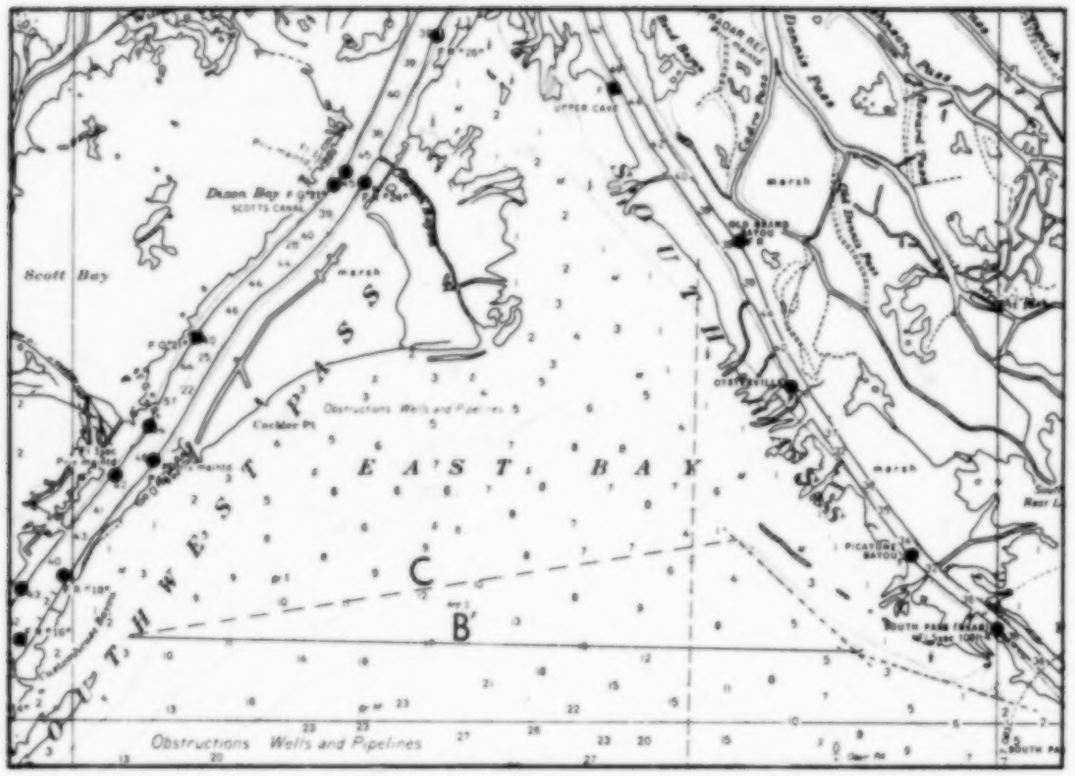

Figure 5. Portion of Chart 1272, edition of 9/17/56, showing closure [C] from La. Exh. 180 and more outward closure [B'] that satisfies all juridical bay requirements expounded by the Master, Article 7 of the Territorial Sea Convention, and the Supreme Court. See requested finding 23 and especially Figure 21 therein of Appendix I comparing the entrance points selected on Cowhorn Island by the bisector of the angle method with recognized (by the United States) uses of the bisector of the angle method at Demarcation Bay in Alaska and at Whiskey Pass on Isle Derniere where the more outward bisector of the angle headlands were employed. See also *United States v. California*, 382 U.S. 448, 451, mandating use of outermost extension of a headland form.

SUMMARY OF SEMICIRCLE TEST DATA RESULTS FROM LA. EXH. 197

PLANIMETRY METHOD	LINE A (In acres)	LINE B (In acres)	LINE C (In acres)	LINE D (In acres)
1	-4,792	- 820 (-1,362)*	+2,578	+2,559
2	-3,010	+ 963 (+ 421)*	+3,620	+3,601
3	+ 403	+4,437 (+3,557)*	+7,855	+7,836

Figure 6. The negative and positive numbers respectively reflect the deficit or surplus acreage by which particular closing lines failed to pass, or did pass the semicircle test through use of possible area measurement systems. Method 1 was approved by the Master; Method 3 uses the Article 7 system of including islands and tributaries.
*Parenthetical data for Line B was introduced in rebuttal evidence submitted by Louisiana to deal with the federal 1970 resurvey in East Bay made immediately following a hurricane by which the government was trying to show that hurricane-associated land loss at the headlands rendered invalid the data for Line B. In rebuttal, Louisiana showed, as the parenthetical data reflects, that the results were not changed, merely the size of the margin.

mitted in rebuttal were identified as B′ and C′. The group of figures above (2 to 6) shows the location of all of these lines[45] and semicircle test measurement data.[46]

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[45] With exception of C′, which is specially discussed hereafter.

[46] This data was supported by measurements and testimony of the cartographic and engineering experts and was unchallenged as to mathematical accuracy.

Other Requirements of Article 7 in Addition to the Semicircle Test have been Satisfied for All Alternative East Bay Lines

The requirements set forth in 394 U.S. 11, at 64, that any alternative closing line must not only satisfy the semicircle test, but independently qualify as a "well-marked indentation" with "identifiable headlands" which encloses "landlocked waters" were clearly satisfied as to all of these alternative lines. The former controversy about the legal question of whether these criteria must be met is moot. They have been met.[47] Thus, the Master found East Bay to be a true bay, a juridical bay, even at its outer natural mouth, Line A. He concluded that Line A would be accepted "as the area which [it] encloses has all of the other characteristics of a true juridical bay" except that it did not meet the restrictive method of area measurement which he felt bound to apply. Otherwise, he said

> If this were not the case, either due to the adoption of a more liberal method of water area measurement or due to subsequent erosion in the area established by competent evidence in the record, either

Line A or Line B would be accepted by him. Report, at 31. The issue, therefore, is the method of area measurement.

[47] Report, at 28, 31.

Line A Not Only Satisfies the Article 7 Method (Method 3 of the Report), but Until Chart Changes Were Made After this Litigation Commenced, Even Satisfied the Conservative Method Recognized by the Master

By use of the system which follows the low-water line and includes islands as part of the area of the bay, Method 3, Line A presently qualifies. Even by the erroneously conservative system excluding tributary waters and islands within the bay, Line A clearly satisfied the semicircle test until a chart change in 1956.[48]

The Restrictive Approach of Excluding Tributary Waters and Islands is Inconsistent with this Court's Prior Applications of Article 7 and Inconsistent With Leading Authorities

The Special Master frankly admitted that Method 1, which he adopted, did not use any of the water from the tributaries which enter into East Bay, the inlets which extend from East Bay to the channel of the Mississippi River. Clearly, these inlets form part of East Bay and are clearly tributary to it. See Figure 7. There is nothing in the opinion of this Court to justify the interpretation given by the Special Master, that a very restrictive approach should be used to exclude tributary waters of a bay in conducting measurements for the semicircle test. As a matter of fact, this Court employed an exactly opposite view. Not only did the Court

[48] See Figures 2 and 3 *supra*, data from La. Exh. 23A, and Appendix I, at 220-224.

Figure 7. Photograph No. 14 from La. Exh. 9 showing tributaries entering the east side of East Bay through South Pass levee.

in note 66 quote eminent authority as to the opposite view:

> "[T]he water of bays within bays may be included as water surface of the outer bay in determining the dimensions of any coastal indentation." Sovereignty of the Sea, United States State Department Geographic Bulletin No. 3, p. 11 (1965). See also 1 Shalowitz, *supra*, n. 7, at 219: "In the application of the semicircular rule to an indentation containing pockets, coves, or tributary waterways, the area of the whole indentation (including pockets, coves, etc.) is compared with the area of a semicircle." 394 U.S. 11, at 51 n. 66,

but the Court explicitly held that the waters of Barataria Bay-Caminada Bay complex could be used to

satisfy the semicircle test for Ascension Bay and Bob Taylor's Pond-Zinzin Bay-Riverside Bay complex were part of West Bay, even though these waters are separated from the outer indentation by a string of islands. Thus, the view of Shalowitz and Pearcy (the author of *Sovereignty of the Sea*) was adopted.

> We have concluded, on the other hand, that the area of "Ascension Bay" does include the Barataria Bay-Caminada Bay complex and therefore meets the semicircle test. Those inner bays are separated from the larger "Ascension Bay" only by the string of islands across their entrances.[69] If those islands are ignored, the entrance to Barataria and Caminada Bays is sufficiently wide that those bays and "Ascension Bay" can reasonably be deemed a single large indentation even under the United States approach.[70] Article 7(3) provides that for the purposes of calculating the semicircle test, "[i]slands within an indentation shall be included as if they were part of the water areas of the indentation."
>
> *********
>
> We think the same result follows in West Bay, where the areas which the United States seeks to exclude from the bay are set off only by strings of islands. 394 U.S. 11, at 52, 53 n. 71.

The comparability of the tributary waters-islands problems of the Barataria Bay-Caminada Bay-West Bay rulings of the Court to East Bay factual situations is graphically clear. For example, the "strings of islands" which set off inner bays within West Bay but which did not prevent use of those inner areas, are quite comparable to many of the stream-canal bank

remnant islands in East Bay. Compare Figure 8 showing the small openings between inner and outer bays within West Bay, such as Bob Taylor's Pond; and the "strings of islands" in East Bay, and ponds between them, Figure 9. The likeness increases when the chart treatment of the Joseph Bayou area is corrected to reflect the reality that had not been fully surveyed in 1959.[19]

The highly marginal character of the deteriorating remnants of former land within East Bay was amply shown in the record. Apart from the fact that the maze of islands around Joseph Bayou is disintegrating due to canalization, it is most difficult to distinguish land from water in the ooze of the inner portions of the bay. See Figures 10 and 11.

This and other evidence of change and marginal complexity confirmed the observations of the late Mr. Justice Black, concurred in by Mr. Justice Douglas on the marginal, exceptional and extraordinarily complex geomorphology of the Louisiana coastal facts. 394 U.S. 11, at 83, 84. In this factual aspect, and the need for practical handling of the unique marginal questions, there was no disagreement in principle in the majority opinion. 394 U.S. 11, at 62-66. The only difference between the majority and dissent was the degree to which they were willing to accommodate these special, complex needs in the interest of justice

[19] The 1959 low-water survey refrained from going into the inlets of the Joseph Bayou area, and therefore Louisiana did not fully agree as to the correctness of that survey because of its failure to fully show tributary waters.

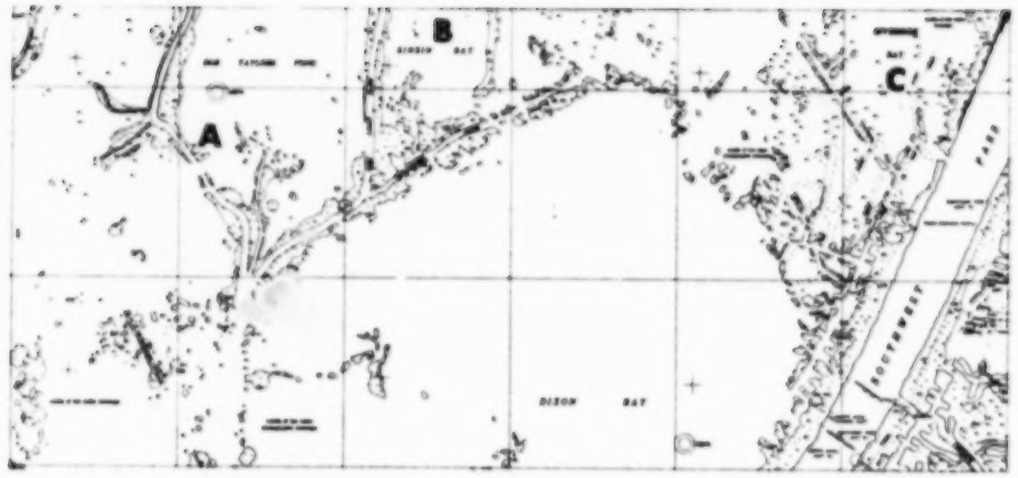


Figure 8. The size of openings into various subsidiary bays within West Bay. Note the almost solid levees separating the inner bays from the outer waters. The inner bays were held to be part of the outer bay. Compare to the tributary-island situations in East Bay in the photographs from La. Exh. 9.
A—largest opening into Bob Taylor's Pond, less than 500 feet.
B—largest opening into Zinzin Bay, less than 150 feet.
C—largest opening into Riverside Bay, less than 500 feet.

to the state and reasonable boundaries. East Bay—indeed, all of the remaining area not decided by prior decrees—is a petty fraction of the total area which was dependent on the Coast Guard Line claim. The majority refused to allow practical grounds to sustain that claim, but did not so decide other questions involving far smaller areas.

Deterioration of the Joseph Bayou Area and the Questionable "Land" Classification of the Stream and Canal Bank Remnants Prove that Line A Satisfies the Semicircle Test, even if the Restrictive Area Measurement System, Method 1, is Employed

The Report at 34 evidences a misunderstanding of

Figure 9A-B. Photographs from La. Exh. 9. Photographs Nos. 34 and 35.

Figure 9C-D. Photographs from La. Exh. 9. Photograph Nos. 36 and 40.

Figure 10. Characteristic deteriorating bank in Joseph Bayou area. From La. Exh. 343. See Figure 9 for aerial view of these disintegrating banks and expanding ponds, discussed in testimony of Mr. Ensminger, tr. 767-769, 783-801, which are so much like Bob Taylor's Pond.

Figure 11. Photograph of "land" near mouth of Joseph Bayou, showing insubstantial watery character of the soil. The "land" is a liquid ooze and the attorney standing on it was in the process of sinking out of sight. See La. Exh. 341.

the nature of Louisiana's arguments on this point. It further confuses the problem by erroneously indicating that the "only" basis for this position is certain photographs offered in evidence late in the hearing and others attached to briefs. From this, it erroneously concludes that further evidentiary hearings would be required to establish the matter.

The simple truth is that there was ample evidence, most of it introduced very early in the hearings, from which the point is readily established, which doubtlessly escaped review in the consideration of the voluminous record. This is evident from the fact that he thought there was no evidence in the early record on the point. For example, the Joseph Bayou land mass

had not been fully developed until a survey associated with the 1956 chart change. This was shown in La. Exh. 23 early in the hearings. Figures 2 and 3 *supra* show that Line A, before the Joseph Bayou land mass was fully developed, satisfied the semicircle test by the most conservative method, that is, Method 1, which was approved by the Master. If the half-developed land mass configuration had enough water area to meet the test, the more than half-destroyed configuration should satisfy the test, even absent precise measurement of the exact extent of destruction. The Report failed to consider this evidence.

Of course, Louisiana, given continuum of change, could not conduct continuous planimetry (area measurement). But this was clearly not necessary. Nor was Louisiana responsible for the failure of the federal government to change the chart as the evidence of the reality warranted.[50]

The government's expert on international law, Dr. Henkin, would agree that Louisiana could challenge the chart's accuracy. Tr. 4936-7:

> [I]t [referring to Article 3 of the Geneva Convention] says the normal baseline . . . is the low water line . . . as marked on large-scale charts. . . .
>
> But if you read the background and the legislative history . . . this is on the assumption . . .

[50] In the other bays of the Mississippi Delta, where it is now immaterial to the oil controversy, Chart 1272 has been revised to reflect the general deterioration and disintegration of the subdeltas of land between the passes of the Mississippi River. But in East Bay, modifications of the chart to reflect subdeltaic deterioration have not been made.

> these charts relate to reality . . . if the line drawn on an official chart differed to any great extent from the tide line, a protest could be made . . . . Dr. Henkin, tr. 4936, citing Year Book of the International Law Commission for 1954, Volume 1, page 990.

The disintegrating Joseph Bayou land mass and the waters within it and other tributary waters within East Bay comprise more than the area by which Line A failed to satisfy planimetry Method 1. Clearly, it satisfied a reasonable method, indeed the method called for by Article 7 of the Convention, Method 3.[51] Clearly, this is a relatively petty matter, for which minor imprecision of data would not be significant, even if it were correct to ignore the true Convention test in applying the Submerged Lands Act. Congress, in enacting the Submerged Lands Act, certainly did not intend for this Court to interpret the Submerged Lands Act or standards under it with miserly precision. See discussion *infra*, on the Congressional intent not to be miserly about minutiae. The facts as to the deterioration of the Joseph Bayou landform, *e.g.*, its canalization and how such canalization destroys coastal marsh lands, were made clear early in the record, contrary to the Report's findings. Indeed, its early treatment explains why it was missed by the Master. See testimony of Alan Ensminger, at 767-69, 783-801 and other earlier evidence discussed below.

The Joseph Bayou landform has shown a history of deterioration over the past two decades, and espe-

[51] See Figure 6, *supra*.

cially since the 1959 survey work which did not attempt to precisely locate the low-water line within the island complex. Much evidence was introduced early in the record in Louisiana's opening case which substantiates massive deterioration since preparation of the 1959 maps. Joseph Bayou originated as a crevasse in the east bank of Southwest Pass prior to 1918 and substantially had completed outward construction of its subdelta into East Bay by the mid-1950's. La. Exh. 23; Dr. Morgan, tr. 414, 417, 419-21, 430, 432, 2636-88. Inspection of the maps, Figures 2 and 3 *supra*, show that the lateral growth was not then completed on the charts, but 1959 low-water survey (see La. Exh. 197) showed full development of the land. Subdeltas within the Mississippi River Delta have shown cyclic growth characteristics as explained in Appendix I, at 174-175. Joseph Bayou is in the deterioration phase, demonstrating extensive loss of land. La. Exhs. 4 & 5; Dr. Morgan, tr. 6291-6307.

As in the West Bay subdelta, canalization of the Joseph Bayou landform has substantially augmented deterioration of that land form. Alan Ensminger, tr. 767-69 and 783-801; Dr. Morgan, tr. 2366-70; La. Exhs. 8, 299, and 341.

Abundant evidence in the record prior to the filing of the *Louisiana Memorandum Presenting Additional Technical Data and Information Requested by the Special Master at the October 29, 1973 Conference* in November 1973 substantiates the rapid deterioration of the Joseph Bayou subdelta. Yet the Report erroneously stated that only belated or post-record evidence treated

the point. See Figures 9, 10, and 11 *supra*, for examples of evidence put in the record early in the case. La. Exhs. 8, 9 (Photos 32-41), 33-35, 193Y-AB, 229, 341 (31 photographs in one exhibit), 343; testimony of Alan Ensminger and Dr. Morgan cited *supra*.

Much of the Joseph Bayou landform is characterized even on present charts by large ponded areas separated from other waters within East Bay by only narrow strings of islands and peninsulas of land. Evidence in the record shows even greater "ponding" and spoil island remnants with much greater connection with East Bay than indicated on current charts. See, *e.g.*, photographs in Figure 9 *supra*, and discussion of the comparison of inner bays within West Bay to East Bay facts. Waters and islands north of Joseph Bayou (if not the entire "land" mass consisting of insular formations) should similarly be held to constitute a part of East Bay's water area. Compare 394 U.S. 11, at 53 n. 71.

The Use of All Tributary Waters, However Minor, is a Valid Application of Article 7 as Shown by the Official Position of the British Government, the Decision in the Thames Estuary Case, and Other Authorities

Consistent with the adoption of the Convention by the Court, Louisiana urges that Method 3 is a proper method. It measures all tributary waters up to the confluence with the Mississippi River and includes as part of the area of the bay all islands within the low-water mark, but excludes tributary waters if they are tributary to any other water body. This is derived from the

Article 7 direction to employ the low-water line. If this Court agrees with the Article 7 low-water line system of including islands and tributaries, then Line A would be the proper juridical bay closing line for East Bay as the Master recognized. Report, at 31.

The identity of Method 3 with the rule of Article 7 is proven in the *Thames Estuary* case.[52] Other than the expressions of this Court on tributary waters to be considered in determining area measurements to satisfy the semicircle test, *e.g.*, 394 U.S. 11, at 53 n. 71, this is the only adjudicated dispute that we have been able to find where a court discusses tributary waters to be considered in satisfying the semicircle test. This case arose over the proper closing lines of the Thames estuary in England. The English Court was interpreting an order which adopted relevant parts of the Convention. In calculating area for semicircle-testing possible closing lines in the Thames estuary, the question arose as to whether various tributaries should be included. This was principally the Thames River, but also included other inlets and streams such as the Swole, the River Medwey, the River Crouch, the River Blackwater, and others.[53] The Court concluded that

[52] Post Office v. Estuary Radio, Ltd., La. Exh. 283, tab 17, 3 All E.R. 663 (1967).

[53] See Louisiana Exh. 290 and Figure E-1 in Louisiana's *Original Brief* before the Special Master, Vol. III, Part 3. Although the holding in the Thames Estuary case is simply an application of the rule of Article 7(3) and does not rest upon the fact that the indentation was an estuary, Louisiana, noting many factual similarities, introduced much uncontradicted evidence that East Bay is also an estuary and is very similar in shape to the indentation at the Thames estuary. See testimony

under the Convention it should not draw a line excluding these areas and that it had to follow the low-water mark "up each river and creek so far as the tide flows and reflows" since it could not find any other logical stopping place.[54] The Court, therefore, followed the direction of the order in the Council (and the Convention) and included, for measurement purposes, the area lying between the low-water mark and the closing line even though it meant including the various tributary areas.

The holding in the *Thames Estuary* case is consistent with the practice of this Court on tributary waters;[55] it is a justification for the adoption of Method 3 and supports Line A.

Louisiana submits that this Court was correct and the Master is in error. The views of the former Geographer of the Department of State, the eminent expert, Dr. G. Etzell Pearcy, and those of the government's principal technical expert in the *California* coastline

of Dr. Morgan, tr. 366-68; Larimore, tr. 5640-42. It is important to note that in Method 3 Louisiana is not considering the waters in the passes of the Mississippi River, but only the tributary streams as they leave the channels of the passes to enter East Bay. Under the Thames Estuary case there would be much justification for using even a greater water area.

[54] In the East Bay situation, there is geographic context which furnishes a logical stopping place other than the tide line. The stopping place would be the point where a tributary ceases to be entirely tributary to the bay. Thus, Dr. Morgan recommended, *e.g.*, measuring the various streams entering East Bay from South Pass until they reached South Pass, but not to count South Pass which was principally tributary to the Gulf. Tr. 2395-7.

[55] 394 U.S. 11, at 53 n. 71.

case, Aaron L. Shalowitz, support this Court's view, that tributary waters should be used.[56] The very language of Article 7 commands use of the low-water line and further directs

> Islands within an indentation shall be included as if they were part of the water area of the indentation.[57]

Line A should therefore be adopted as the closing line for East Bay as a juridical bay extending between coordinates X = 2,697,850, Y = 117,200 on the east, and X = 2,624,995, Y = 108,700 on the west.

The Special Master's Report, While Recognizing that the Coastline is Ambulatory and its Changes Should be Determined Since June 5, 1950, Nonetheless Failed to Apply His Findings to the Configurations in East Bay that were Extant Until 1956 Chart Changes, which Satisfied the Highly Conservative Area Measurement System (Method 1) Approved in the Record

Given the kalideoscope of change in shorelines the Master faced, it isn't surprising that an oversight occurred in applying the standards he approved. While

[56] "The water of bays within bays may be included as water surface of the outer bay in determining the dimensions of any coastal indentation." *Sovereignty of the Sea*, United States State Department Geographic Bulletin No. 3, p. 11 (1965). See also 1 *Shalowitz, supra*, n. 7, at 219: "In the application of the semicircular rule to an indentation containing pockets, coves, or tributary waterways, the area of the whole indentation (including pockets, coves, etc.) is compared with the area of a semicircle." 394 U.S. 11, at 51 n. 66.

[57] For other authorities on use of tributary waters and islands, see materials cited in Appendix I, at 242-250.

he recognized Method 1 and his obligation to apply the Convention for each significant change since June 5, 1950 to the present, he failed to recognize that East Bay Line A satisfied the test he approved until 1956, although the evidence was uncontroverted on the point. Until the 1956 chart change on Chart 1272, the line corresponding to Line A extending from the tip of South Pass to the "hump" on Southwest Pass, satisfied the semicircle test. See Figures 2 and 3 *supra*. This was uncontested data and employed the system approved by the Master in his Report, the system of closing off tributary waters. Examination of the overlays in La. Exh. 23 and 23A shows that Method 1 was used.

Leases were granted by the State of Louisiana prior to the 1956 change in the chart, and prior to any injunction. The Master has failed to make an important factual finding. No ruling of this Court requires that a party must sacrifice past proceeds of mineral leasing in areas lost by shoreline or chart change. It was for that reason that the parties agreed that an important issue in the case was to determine

> Have there been changes in the coast line that would affect the future distribution of revenues heretofore accrued since June 5, 1950 and, if so, when did the changes become effective?

See Report, at 58, Appendix A-1, Issue 6 (e).

Thus, even if the Convention method is rejected and Method 1 accepted by the Court, Line A should be recognized until 1956.

If the Court Should Approve the Use of All Tributary Waters but not Approve the Use of All Islands Seaward of the Low-Water Line for Measuring Area Under the Semicircle Test, Then at Least Line B Would Qualify as a Closing Line for East Bay

The arguments for Closing Line A also support Closing Line B. The only significant difference between Closing Lines A and B relates to Line B being the more inward alternative line, between clearly identifiable headlands, which satisfies the semicircle test even without the use of all islands as called for in the Convention.

Closing Line B data is reflected in La. Exh. 197, and in Figure 6 *supra*. Not only does this line satisfy Method 3; it also satisfies Method 2. The difference between Method 2 and Method. 3 is essentially that Method 2 does not rely upon the use of all islands, especially those of the Joseph Bayou area. Method 3 counts both tributary waters and islands within the bay. (See arguments *supra*.) We have amply demonstrated that Line A satisfies the semicircle test, especially in light of this Court's West Bay precedent. In the event the Court should differ and decide that islands in East Bay should not be counted, then it would be appropriate to recognize Closing Line B.

Even if Line B Were to be Rejected, Lines B′ and C′ Qualify

Lines B' and C' are two other alternative lines in the vicinity of Line B. The Court might approve

either of these lines if for any reason Line A were rejected. See Appendix I, at 225-229 and 241, and materials cited therein.

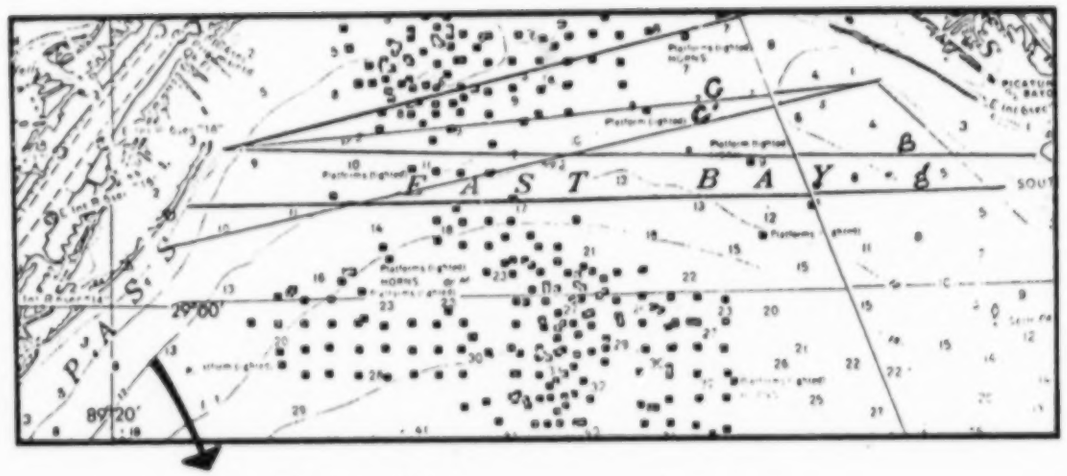
The Master recognized that it was conceded that both of these lines satisfied the semicircle test. See Appendix I, at 227, paragraph H, quoting a federal government memorandum in response to a Louisiana memorandum submitted to the Special Master on technical data pertaining to these lines in which the government admitted:

> Our calculations show that each of these lines [B', C, and C'] satisfies the semicircle test.

If the correct editions of Chart 1272 are examined, headland reasoning used to reject these lines is unsound. This suggests that an erroneous federal map illustration confused the Master. See Figure 12, showing how consolidation of several alternatives on a single map could have misled the Master, since the alternatives related to maps of different dates showing different shoreline changes.

The Report incorrectly reasoned

> . . . neither of these closing lines has a western terminus that qualifies as a pronounced headland helping to enclose landlocked waters. Closing Line B' suffers the additional objection that its eastern terminus is located at approximately the center of Cow Horn Island by applying the so-called "bisector of the angle" method, a technique entirely inappropriate in the physical situation, as there are pronounced headlands in the vicinity. Report, at 32.



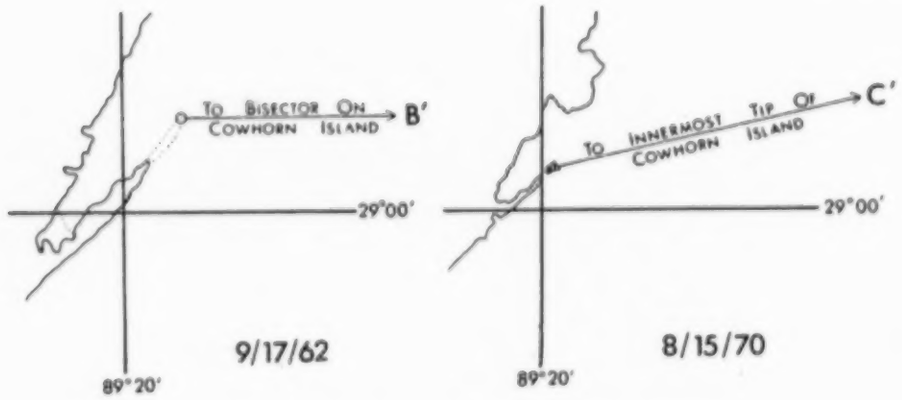


Figure 12. The top map is a reproduction of a cartographic exhibit from the federal memorandum brief to the Special Master, incorrectly representing that Lines C' and B' used the 1968 chart and terminated on flat shore line. Showing the lines on charts which are the bases of the C' and B' claims proves the contrary. See the sketches of the lines at the western headlands on 1962 and 1970 charts.

Cowhorn Island, the eastern headland, has essentially the same pronounced character as the sharply pointed western headland, a peninsula jutting northeasterly into East Bay from the Southwest Pass banks. See Figures 12 and 5.

In spite of this nearly identical shape of eastern and western termini, the Master found Cowhorn Island is a pronounced headland and at the same time inexplicably declared that the identically shaped western peninsula headland was not a pronounced headland. The eastern natural point on Cowhorn Island for Line B' selected by the bisector of the angle method was rejected because Cowhorn Island presented a pronounced headland at its tip. This seemingly self-contradictory aspect of the Report can only be explained on the basis of an examination of the wrong map, for the peninsula on the west side is equally as pronounced.

It is certainly true that the bisector of the angle method has been recommended for situations where there is an absence of a pronounced headland. 1 Shalowitz, *Shore and Sea Boundaries*, 64. But no authority has been suggested to deny that when a pronounced headland has a gently rounded and featureless shore that forms a more outward entrance point that the bisector of the angle method should *not* be employed to ascertain the outermost extension of that headland. See illustration in 1 *Shalowitz* at 64. This rule calling for the selection of a natural entrance point on a natural headland which constitutes an outermost extension of it was applied in favor of

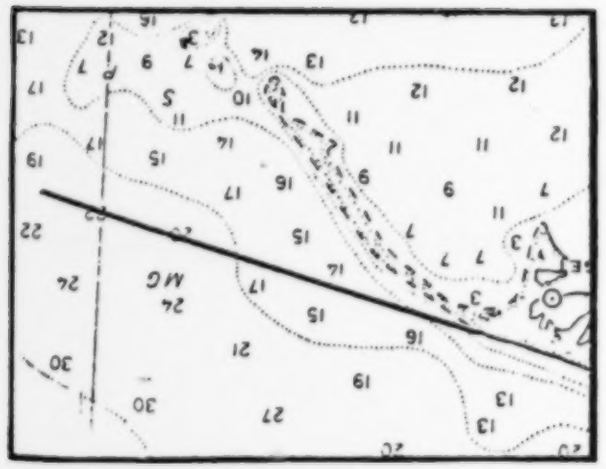
the State of California by this Court and applied as to Alaska by federal agencies. The State of Louisiana should be treated equally.

> In drawing a closing line across the entrance of any body of inland water having pronounced headlands, the line shall be drawn between the points where the plane of mean lower low water meets the outermost extension of the headlands. *United States v. California*, 382 U.S. 448, at 451.

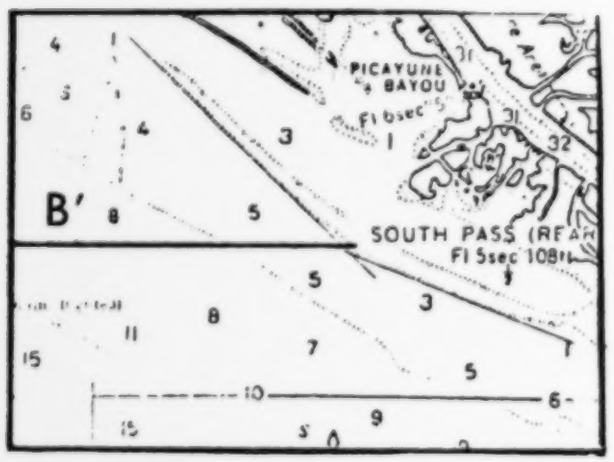
Cowhorn Island is a pronounced headland, as is evident from the Master's approval of Line C. Thus, the outermost extension of it or the outermost natural entrance point on it (even one established by the bisector of the angle method) should be employed. Certainly, the Justice Department, the Geographer of the Department of State and all other affected agencies of the federal government have agreed this is so for Alaska. Compare the Demarcation Bay precedent from U.S. Exh. 416D to the Cowhorn Island situation in Figure 13.

The Louisiana alternative, B', came about by way of rebuttal response in the proceedings before the Special Master to federal attack on Closing Line B. The challenge to Line B erroneously failed to appreciate the alternative character of the contention arguing that the headland it employed at South Pass was improper because the line crossed the low-water elevation known as Cowhorn Island.[58] Louisiana re-

[58] Actually, this reasoning would cause Line B to satisfy Method 1 by greatly shortening the closing line. See Article 7 (3) calling for use of the distances between inter-



(1) Demarcation Bay.



(2) East Bay Line B'.

Figure 13. Comparison of (1) bisector of the angle natural entrance point of the Geographer of the Department of State approved for Demarcation Bay in Alaska by Interior, Justice State, C. & G.S. and other federal agencies, with (2) bisector of the angle natural entrance point selection on Cowhorn Island for Line B'. Note that in both instances a sharper, more inland closure is not employed, but the more outward identifiable, gently rounded point is selected. See U.S. Exh. 416D, Chart 9478 and Figure 21, Appendix I.

sponded by pointing out that a line, B', situated almost identically, satisfied the bisector of the angle method. Thus, even if Cowhorn Island were found to be present, Line B or its substantial equivalent, Line B', had a satisfactory eastern headland as well as satisfying the semicircle test. Line B and its near equivalent, Line B', are really supported by the presence of two aligned headlands, one on Cowhorn Island and one on the East Bay shore of the South Pass bank. The federal attack on it only served to establish that it satisfied Method 1 as well as Method 2 area measurement.

As discussed in the section *infra* concerning Cowhorn Island and the unfair post-hurricane 1970 resurvey which led to revisions of Chart 1272, Louisiana contends that Cowhorn Island's continued existence should be recognized and the shoreline configuration changes made on Chart 1272 in the December 6, 1969 and 1970 revision should not be given effect. See Appendix 1, at 237-240, and especially subparagraph D at 239 referring to technical evidence establishing the unfairness of the post-hurricane survey which was used to change the chart.

In addition to pointing to the unfairness of a post-hurricane survey, Louisiana submitted evidence as discussed *infra* showing additional reasons why Cowhorn Island's continued existence should be recognized, such as the fact of its counsel-directed removal, the routine, deliberate consideration and re-

vening islands and excluding the distance across the islands for computation of the diameter of the test semicircle.

jection of the 1959 low-water survey results by the Marine Chart Division soon after the survey and the affirmative effect of the aerial photography interpreted by the expert, Mr. Buttorff. Consequently, it is conceivable that the Court might rule in favor of the continued recognition of Cowhorn Island while yet otherwise accepting the 1970 Coast and Geodetic Survey change in Chart 1272 in areas removed from Cowhorn Island. The western terminus of Line C' is a headland selected on the post-1970 chart revision and since the line therefore related to two different maps at its opposite termini, it could not be correctly illustrated on a single chart as was attempted by the federal government in a composite illustration at page 14 of a memorandum filed with the Special Master entitled, *Memorandum of the United States in Response to Louisiana Memorandum Presenting Additional Technical Data.* . . . This illustration had confusedly shown a maze of alternative lines crisscrossing each other and Line C' as terminating at a point on a flat shore line configuration. See Figure 12, a reproduction of this erroneous map from the federal technical memorandum. The error pertains, not to the location of the line, but to the implied misrepresentation of this illustration that the line terminated at a point where there was no pronounced headland. This erroneous impression was achieved through using as a base map the 1968 edition of Chart 1272. Of course, the 1968 chart did not reflect the earlier chart location of the sharp point at the tip of the peninsula that runs northwesterly along the East

Bay shore of Southwest Pass on the earlier and later editions of Chart 1272. The termini of Lines B' and C' are reflected on the correct charts in Figures 5 and 12. These figures show that B' and C' in fact have western termini that are pronounced identifiable headlands on the charts to which the alternatives related. For the 1968 chart configuration Louisiana had presented data for B' using not the flat shore of the peninsula's side, but its tip at X = 2,644,940, Y = 134,910. See Appendix I, at 241 paragraph 30 and materials referred to therein.

If More Outward Closing Lines are not Recognized, Three-Mile Projections From Cowhorn Island and a Closing Line Employing It (Line C or C') are Justified as the Existence of Cowhorn Island on Large-Scale Charts, in Fact, Had Been Amply Proved, if Unreliable Survey Evidence is Rejected and if Chart Changes Made to Affect the Litigation are Ignored

The Special Master found that Cowhorn Island existed until December 1969. Cowhorn Island forms a shoreline for the projection of 3-mile arcs if the more outward Lines A and B are not recognized. Additionally, it forms the eastern headland for Line C approved by the Master. See Report, at 33-34. It had long been reflected on nautical charts and surveys of the coast and its existence had been repeatedly established by hundreds of soundings in various hydrographic surveys. See, *e.g.*, the charts collected in La. Exh. 23, editions of 1918, 1924, 1925, 1935, 1944, 1955, 1956, through the numerous revisions of the charts in the

1960's made after deliberate consideration and rejection of the significance of its alleged non-appearance on the 1959 photo-survey. See testimony of Mr. Richardson of the Marine Chart Section, U.S.C. & G.S., La. Exh. 123.

This is the survey which was the subject of the government claim in this lawsuit that a 1959 high altitude photographic survey did not show the low-water elevation known as Cowhorn Island or Cowhorn Reef. It was not found in hasty helicopter flights in 1959; therefore, the government contends it did not exist since 1950. Louisiana had shown that Cowhorn Island had continously appeared either as a low-water elevation or an island on the official Coast Charts, 194 and 1272, from 1918 until it was removed at the direction of federal counsel on December 6, 1969. The removal occurred one day after a December 5, 1969 pretrial conference fixing the issues in the Special Master proceedings and within a few weeks of the October 29, 1969 Wraight-Richardson depositions at U.S.C. & G.S. offices in Rockville, Maryland, which dealt with the area and surveys proving its existence. See La. Exh. 123. The depositions had revealed Louisiana's reliance on the official chart and the December 5, 1969 pretrial conference had fixed the issues.

The principal government justification for the December 6, *1969* deletion of the area, as argued in briefs before the Special Master, was a January *1970* resurvey and field inspection made after Hurricane Camille struck the area as well as the testimony

of the field inspection party chief involved in the 1959 and 1970 work, a federal employee.

Joseph K. Wilson, the U.S.C. & G.S. field inspection supervisor of the 1970 survey, admitted under cross-examination that coastal survey work following a major hurricane does not fairly reflect normal conditions of the shore because "the hurricane changes everything." Tr. 4677.

Yet, this anomalous, temporary shoreline condition was urged as a basis to sustain the chart revisions, even though continued existence of Cowhorn Island had not been disproved, certainly not by the highly reliable type of hydrographic work which had initially shown its existence, and not by normal, safe charting practice. Literally, thousands of soundings had been made in the hydrographic survey showing Cowhorn Island's earlier existence above mean low-water levels. See La. Exh. 123, Richardson-Wraight deposition, map R-5, showing the thousands of soundings made to locate this low-water elevation and used to place it on the charts precisely.

By contrast, one—just one—accurately located sounding was made at the alleged location of the feature in the January 1970 survey to justify the December 6, 1969 removal. See U.S. Exh. 200, Survey Area 6 discussion of sounding 6B at pp. 1, 4.

For navigational safety, normal practice would not have justified removal from a chart of a low-water elevation proven by hydrographic survey, on the basis of subsequent less reliable photogrammetric

survey and spot field inspection techniques. Indeed, before the depositions and the later conference revealing Louisiana's reliance on the configuration shown on Chart 1272, the Marine Chart Division had itself rejected the 1959 photogrammetric and aerial field inspection work, preferring to continue to show Cowhorn Island and other low-water elevations on the chart. This was deliberate, even though not found in the photogrammetric survey field work of 1959. Normal charting practice preferred the greater reliability of hydrographic surveys and the need to be safe and conservative in removing low-water elevations from charts.

See deposition of the expert from the Marine Chart Section of the U.S.C. & G.S., Mr. Richardson, La. Exh. 123, pp. 99-100, 120-123, regarding the fact that the U.S.C. & G.S. had routinely *not* removed Cowhorn Island and other low-water line configurations from Chart 1272, after considering the 1959 topographic-photo survey work, pursuant to the normal safety practice of good chart work. That the change came about by direction of counsel is revealed by sworn cross-examination:

> Q. Now, isn't it true, sir, that the change that occurred in chart 1272 when Cowhorn Island was taken off of chart 1272 in the December 6, 1969 edition and certain other [contested landforms] shown were also taken off, that that change came about as a direct consequence of suggestions not initiated by the Marine Chart Section, but initiated by legal coun-

sel following the deposition I took from you and Dr. Wraight in Rockville, Maryland?

A. This is true, Mr. Hugh Dolan of NOAA staff, who is legal adviser for National Ocean Survey, *told us, Marine Chart division to remove these areas* from the charts.

Q. Thank you.
No further questions.
Tr. 5113-14. [Emphasis added.]

In legalistic fashion, the December 6, 1969 change in Chart 1272, to delete Cowhorn Island, was voluminously documented by statements of what was *not* seen in the 1959 survey, approved by people who were not there at the time or who had never been there. Such statements were made or approved ten years later, mostly by people who hadn't ever seen the Mississippi Delta and who were not subjected to cross-examination. A Mr. Wilson was the only real eye witness to the inspections made at mean low-water, in a few brief minutes in 1959. He was the 1959 federal survey party chief. Mr. Wilson swore that he had made no notes on field inspection photographs used in his low-water inspections, where his inspection at low-water showed no land exposed at low water. Tr. 4673, 4676. The very purpose of his inspection was to ascertain whether doubtful or controversial areas existed above low water. See tr. 4669. On cross, Mr. Wilson confirmed that in the particular case where he located no land, he made no notes.

CROSS-EXAMINATION

BY MR. ELLIS:

Q. Was it your testimony, sir, that if you found

out that there was not a location that you made no notes?

A. I made no notes in that particular case.

Q. And you made no notes in that particular case because you considered it was not significant?

A. Because I had checked it very thoroughly, sir.

Q. But you didn't consider that significant enough to make any notes of that which you had checked very thoroughly and which you have stated was the purpose of your mission, you made no notes about that, the prime purpose of your mission?

A. I made no notes. Tr. 4676.

This incredible testimony was contradicted by the notes on the inspection photographs the Special Master had before him. See U.S. Exh. 7 which contains behind Reference Map No. 7 copies of the field inspection photographs, initialed by Mr. Wilson, and showing the inspection notes made by him. Photo 8983 shows two notations reading "covered at LW," and similar notations appear on photos 8985, 8989 (three places) and 8727, all made by this witness. *But no such notation was made for the Cowhorn Island locale* or other contested points shown on Chart 1272 but not shown on the 1959 photogrammetric survey, *only at other points not subsequently contested by Louisiana.*

In sharp contrast to this reliance on the absence of information, Louisiana introduced positive evidence to show that the infrared photographs in 1959 tended to confirm the continued existence of land at low water

at the Cowhorn Island locale and at other important marginal locales which were contested. Mr. Curtis Buttorff is an independent, highly experienced, infrared interpretation specialist, then employed by Geophoto Services, Inc., a subsidiary of Texas Instruments. He was not an employee of a litigant, like the government witnesses, but rather an independent expert, with experience in the Mississippi Delta and coastal photomapping experience throughout the world. See tr. 1872 *et seq.* on the background of this expert. Mr. Buttorff testified, tr. 5863-65, the survey photographs showed wave action or other phenomena in the vicinity of Cowhorn Island and other low-water configurations which Chart 1272 continued to reflect until removed in 1969. This indicated the possibility of land at or near the water surface, which may have been slightly covered with water, due to meteorological or wave phenomenon. (Long waves may immerse narrow spits or islands at the moment a picture is taken.) Mr. Buttorff concluded that although the photographs did not alone definitely establish presence of land above the low-water datum at the locations in question, they tended to confirm rather than refute the prior hydrographic survey work showing land above the mean low-water datum at these locales. Land above mean low water may be frequently submerged and cause wave action over it.

One eye witness, a wildlife biologist, flew the area twice monthly every year to conduct wildlife counts during the 1950's. This witness testified to the fact of frequently counting thousands of blue and white geese

on the island during the seven-year period he made wildlife surveys in the 1950's. See testimony of Mr. Richard Yancey, tr. 1252-1259, and La. Exh. 8, showing markings of the witness.

Federal experts have established facts which show that a random daylight observation of land is very probably an observation made when the water stage is higher than low water. Low-water tides normally occur only at night along the Louisiana coast, except in December and January. See Jones and Shofnos, "Mapping the Low Water Line of the Mississippi Delta," XXXVIII International Hydrographic Review 63, at 71 (1961):

> . . . most low tides reaching mean low water, or below, occur at night.

Messrs. Jones and Shofnos reported that, statistically, only five days from November through January could be expected when low tide and flying and photographic daylight conditions would be present simultaneously, and these were subject to "a wild card in the deck—the wind." The Court will readily understand that it is not easy to produce an observation or photograph of a low-water elevation, but when one is produced, it is weighty evidence of the existence of the low-water elevation, since they are normally invisible in daylight in Louisiana conditions except for waves breaking over them.

Thus, the wisdom of normal safe charting practice is evident. Low-water elevations proven by hydrography should continue to be recognized until clearly

and positively disproved by survey work of equal dignity.

Chart standards are commanded by the Convention, Article 3, and this Court directed use of that Convention's standards. 394 U.S. 11, at 35. The difference in the 1959 *mapping* standards and the *charting* standards of the U.S.C. & G.S. was explained in U.S. Exh. 200, Appendix D, at p. 31.

> Before getting into specific instances, it is important to re-emphasize that the maps compiled in 1959-60 were developed for the purpose of accurately delineating the mean low-water line as it existed *at the time of the survey*, while nautical charts are published to show the necessary data for safe and efficient navigation *over a period of several months or years*. Thus the *chart compiler will always lean to the side of safety in compiling or deleting data affecting safe navigation.*
>
> It is the policy of the Coast and Geodetic Survey to retain charted features affecting safe navigation *until their existence is positively disproved by field inspection.* [Emphasis added.]

A major difference between charts and mere maps was explained by the U.S.C. & G.S. geographer, an expert on geographic nomenclature, Dr. A. Joseph Wraight, in his deposition. Charts are for navigation and therefore use compiled hydrographic survey data and not merely topographic data. See La. Exh. 123, p. 7-8, and 32.

Thus, charts are a summary of a "motion picture" and should show conditions over long periods. They

must therefore err on the side of safety, showing marginal cases as land above mean low water, whether or not precise "still camera" methods could prove contrary information as of a moment in time. The Court has decreed that there is to be an ambulatory boundary, but ambulatory by the standards of the Convention—normal, gradually changing *chart* low-water lines. Surely, the Court did not mean that after each hurricane or each flood, each side should quickly survey the abnormal conditions to "disprove" the more normal, safe, permanently oriented chart shoreline.

Obviously, the question of whether a chart is correct should not be judged by the still-camera inadequacies of post-hurricane photo-grammetric surveying. Rather, reasonableness over time should be the standard. Indeed, that was the standard, until legal direction resulting from oil litigation replaced normal concern for safe navigation.

The December 6, 1969 chart revision change, it will be recalled, was made after depositions showing Louisiana's reliance on Chart 1272 configurations and immediately after the December 5 agreement on the issues, which agreement referred to the December 5 chart configurations. The January 1970 resurvey, again not using correct hydrographic survey methodology, was made soon after a hurricane struck the area and it takes years for normal conditions to be reconstituted after a hurricane. The worthlessness of the survey for showing normal conditions is apparent by the admissions made by the survey party chief under cross-examination to the effect that survey work after

a major hurricane does not reflect normal conditions of the shore. Tr. 4677. See also Appendix I, at 237-240, and especially subparagraph D at 239, citing scientific studies and reports in La. Exh. 283 (13).

For these reasons, we contend that the Special Master was correct in finding the presence of Cowhorn Island until December 6, 1969, but erred in not finding it existed after December 6, 1969. Self-serving action by the federal government during the pendency of this litigation should not subvert normal chart standards, and the government should be signaled by this Court that it cannot thus toy with safety.

Louisiana suffers enough from hurricanes without having to suffer loss of its inland waters after each hurricane through unfair surveys which exploit temporary disaster conditions, such as those caused by Hurricane Camille. The January 1970 resurvey was made only 5 months following passage of Hurricane Camille, "one of the most intense storms in recorded North Atlantic tropical cyclone history" (La. Exh. 283(13), p. 5) through the delta area. Wright, Swaye, and Coleman of the Coastal Studies Institute, commenting on the effects of Camille in the delta area stated:

> Most landforms—certainly most depositional landforms—are primarily the product of normally occurring processes which act with regularity and high frequency. However, occasional catastrophic events may modify a landscape to the extent that normal processes, once they resume, act upon a different set of "initial" conditions. In such a case form-process equilibrium will eventually be regained, but only after changes in the precatastrophy morphology have taken place. La. Exh. 283(13), p. 13.

These changes in the pre-catastrophe morphology take extensive time to be fully effected and in fact have been in the process of occurring. However, while giving effect to the post-catastrophe 1970 survey, the Master would not permit later photographs to rebut it or show long-term impact of the hurricane. See Report, at 34, denying Louisiana the right to use the recent photographs which "do show substantial erosion" in the Joseph Bayou area and Line A arguments, *supra*. The inequity is emphasized by the admission of the 1970 federal survey chief that a post-hurricane survey does not fairly reflect normal conditions. Tr. 4677. The inequity is compounded by the testimony of the U.S.C. & G.S. experts that a chart should err on the side of safety and reflect relatively normal conditions over long periods of time. See U.S. Exh. 200, App. D, p. 31.

The inequity is contrary to Article 3 of the Convention, mandating use of chart low-water line standards, for the "normal" baseline.

The inequity is the kind of small thing with which this Court and Louisiana have been unreasonably burdened, and which the late Mr. Justice Black and Mr. Justice Douglas styled "technical and wasteful." 394 U.S. 11, at 78 n. 2. This and future petty detail can be made moot through recognition of historic claims or more outward Louisiana juridical positions.

The Master's Report is Self-Sustaining on Line D

The Master's Report is thoroughly self-sustaining on Line D, a more inward alternative that must be respected if the Convention is to have any application in the case at bar. See Report, at 34. It is purely an alternative and need be considered only if the more outward claims are rejected.

EAST BAY SUMMARY

Line D is the last and most inward of Louisiana's East Bay alternative contentions, which are numerous, complex, and operative only if each successive outer alternative is rejected. See Appendix III for a synopsis of these contentions with appropriate closing line descriptions. The East Bay juridical problems would be simply resolved by use of the Convention's Article 7 (Method 3) system of semicircle test measurement and resultant acceptance of Line A. Even that problem need not be decided if Louisiana's "point to point" historic claim is accepted.

The alternative exception of the syllabus concerning the termination date of the recognized inland character of the outer portions of East Bay is important for two reasons. First, it supports Louisiana's historic claims, for the evidence is clear that by the most conservative approach, East Bay was a bay before and after the inception of this controversy, on June 5, 1950, the date accountings commenced, and in 1953 when the Submerged Lands Act was enacted. Secondly after June 5, 1950, accountings will need to consider changes, if any, in the boundary. It is submitted that chart

changes after the filing of this suit should not affect Louisiana adversely without its consent.

ASCENSION BAY

The Report Should Be Adopted as to Its Findings That the Ascension-Caminada-Barataria Bay Complex is an Overlarge Bay within the Meaning of Article 7 and that a 24-Mile Baseline Should be Drawn Between the Coordinates X = 2,406,890, Y = 189,733, and X = 2,550,402, Y = 216,158

The Special Master's findings, Report, at 45-46, are correct and require no further elaboration. It is premature to anticipate the need for a reply to exceptions which should not be taken by the government.

FOURTH EXCEPTION

TREATMENT OF ISLANDS

The State of Louisiana further excepts to the Special Master's failure to correctly and fully use applicable legal criteria for treatment of islands as part of the mainland and for the determination of natural entrance points of bays. These errors have caused the Special Master to fail to recognize more seaward closing lines for recognized juridical bays, including Bucket Bend Bay, Blind Bay, Garden Island-Red Fish Bay, and Atchafalaya Bay.

General Errors

The areas which are the subject of this exception are treated in the Report, at 35-42 and 52-53. Major errors include treatment of certain mere factors not only as rigid tests or requirements, but also as *cumulative requirements, all* of which had to be satisfied. This led the Master to reject as "immaterial," Report, at 39, the strong authorities the Court had cited relative to the special consideration to be given fluvial islands. Fluvial islands are built from the mainland, indeed their very materials are derived from the mainland and ultimately they unite with the shore, whether they be ordinary river mouth islands or remnants, or the classic "mudlump" fluvial islands involved in *The "Anna."* See *e.g.* Appendix I, at 172-179, 231-234.

Another significant error rests in the interpretation given by the Master to *The "Anna"* (1805) 5 C. Rob. 373, Report, at 39, and to this Court's special

treatment of that case and similar authorities. The Court had presented a very strong discussion favoring use of mudlump islands and recognizing the strong authorities favoring use of river mouth islands. All of this law had its roots in *The "Anna"* as this Court's analysis in note 84, 394 U.S. 11, at 64, 65 suggested. The discussion by the Court and the language it used had been so strong, quoting *The "Anna,"* and several major writers, that it seemed implicitly to favor using *any* fluvial island or mudlump island, merely because it was fluvial. It was this implication that the Court was attempting to avoid when it said that the discussion should not be taken as suggesting that every mudlump island is part of the coast and that origin is one consideration.

Somehow, the Report would change this flexible limit on the importance of an obviously major factor into meaning that practically *no* mudlump or fluvial islands should be treated as part of the mainland, or that the major factor should be ignored if a single minor factor is not found.

The Report also ignores the historic waters nexus of *The "Anna"* with the geographic problem. We are not merely discussing *The "Anna"* as a precedent that governs identical facts. (See Figure 80B in Louisiana's *Reply Brief* before the Special Master.) We are discussing the very waters, the very area, the almost exact islands and pass of the Mississippi River, the same geographical configuration for which an *American ambassador appeared in the British Courts and laid claim of American territory.* If ever there was a valid his-

toric claim, this is it; for there was an assertion of jurisdiction, a formal judicial proceeding and a concurrence in the claim by the courts of a foreign sovereign whose decrees that sovereign enforced. Then, for more than eight score years, courts and doctrinal writers on international law around the world have recognized the importance of the case. See Appendix I, at 178.

The Court did not merely cite authorities but used its own language:

> . . . it is ancient lore that islands created by sedimentation at river entrances are peculiarly integrated with the mainland itself . . . . 394 U.S. 11, at 65 n. 84.

Of course, the Court knew that the Convention now had to be applied. Indeed, the very reason the Court discussed early authorities and writers was that the Convention was silent and it was reasonable to consult established custom, precedent and authoritative sources for guidance *in applying the Convention*. It is incomprehensible that note 84 of this Court's opinion should be interpreted so that nearly a page and a half of a strong discussion is summarily dismissed, on the basis of a short paragraph. It is ironic that the paragraph was intended to prevent the very strength of that discussion from causing any sole factor always to govern, for the Report uses the paragraph to contend that a *single* factor which is not satisfied will always control the question, if answered negatively to a state's interest.

The error of the rationale is further evidenced by

the fact that this Court directed that the Master would be free to consider "any evidence he finds it helpful to consider." 394 U.S. 11, at 66. If failure to satisfy any one of the specifically enumerated factors were fatal, under the intendment of the Court's holding, then it could not be said the Master was to be free to consider any other relevant criteria or helpful evidence. Other criteria or evidence then could not be "helpful" or "relevant."

Louisiana submits that the Court was not commanding an objective, rigid test or set of strict requirements. Indeed, the Court said there was little "objective guidance," 394 U.S. 11, at 66. Plainly a rigid objective formula in which all factors mentioned had to be satisfied was not intended, for if all of the criteria were rigid, cumulative *requirements*, the Court would not have used terms such as "factors," "realistically," "illustrative," "consideration" and other similar words suggestive of flexibility. A rigid, mechanistic, cumulative formula that was open-ended for further "add-ons" of additional, yet undefined, strict requirements is inconceivable. It is true the Court said the factors were illustrative rather than exhaustive, but they were only what the Court called them—factors, not cumulative, rigid requirements, as the Report would have it. We do not quarrel with the merely illustrative nature of the factors for it emphasizes their flexible character.

The Master, while initially styling these factors as guidelines, ended up interpreting them as a "test" with criteria, *all* of which had to be satisfied but which if

satisfied would nonetheless *fail* to prove islands should be treated as part of the mainland!

> While it is true that the Court leaves open the possibility of considering other relevant criteria and states that the list given is intended to be illustrative rather than exhaustive, this appears to be intended to leave open the question of whether islands or low-water elevations which meet the five suggested specific criteria may nevertheless fail to qualify as parts of the mainland rather than to suggest that islands or low-water elevations which fail to meet one or more of these specific tests may nevertheless be so assimilated. Report, at 37.

If anything, the "illustrative rather than exhaustive" footnote of the Court in 394 U.S. 11, at 66 n. 86 must have been intended to correlate back to the Court's language:

> And it is ancient lore that islands created by sedimentation at river entrances are peculiarly integrated with the mainland itself . . . . 394 U.S. 11, at 65 n. 84.

This strongly implies that the single positive factor of the fluvial origin of river mouth islands might *always* override other considerations due to the "peculiar" treatment long afforded them. This is *not* language suggesting that a single negative factor should always predominate.

Another misinterpretation of the Court's opinion occurs where the Master accepted the federal argument that *The "Anna"* was not authority for treating the mudlump there involved as an extension of the

mainland. Report, at 39. In response to a Louisiana argument, *the Master stated that the fact that something geographically constitutes part of the mainland was irrelevant to determining bay closing lines.* He cited the Court's analysis of *The "Anna"* to sustain this point when, in fact, it is exactly opposite in its significance. The federal government had argued that because *The "Anna"* did not involve delimitation of bays, it had no relevancy to the issue of whether islands should be treated as part of the mainland. This argument had occurred in the earlier proceedings before this Court and the Court had refused to accept it, noting that the essential feature of *The "Anna"* was that the Court had had to decide that the islands were "deemed part of the shore." 394 U.S. 11, at 64 n. 84.

Thus, it is submitted that when this Court said

> But if the court had been of the view that the three-mile belt extended from islands as well as the mainland, it would not have had to decide that the mud islands were "deemed the shore." 394 U.S. 11, at 64 n. 84.

it was meant that the government's argument was incorrect, that the case *was* valuable and persuasive material for the purposes of the Convention. Somehow this meaning is turned inside-out in the Report where the Master had only given negative effect to considerations as to the nature and origin of mainland islands:

> . . . their nature and origin is immaterial, although a non-fluvial origin might be a negative factor. . . . Report, at 39.

Contrast this to the treatment *of some of the very same islands* by the British Court in *The "Anna"*:

> . . . that they are the natural appendages of the coast on which they border, and from which indeed they are formed. Their elements are derived immediately from the territory, and on the principle of alluvium and increment, on which so much is to be found in the books of law. . . . (*Quoted with approval*) 394 U.S. 11, at 64 n. 84.

Further contrast the Master's "immateriality" reasoning with the statement from *Wheaton, quoted* 394 U.S. 11, at 64-65 n. 84, "[t]he term 'coasts' includes the natural appendages of the territory which rise out of the water. . . ."

In spite of this, there was a rejection of such evidence on the grounds that other tests had to be cumulatively met, one of which was relationship to the coast. Report, at 38, 39. It was not discerned that Wheaton's point involved relationship to the coast.

Compare also the Master's finding of immateriality with this Court's language: "And it is ancient lore that islands created by sedimentation at river entrances are peculiarly integrated with the mainland itself. . . ." 394 U.S. 11, at 65 n. 84.

Nys' words, "The islands situated at the mouth of a river are embraced as part of the territory. . . ." *quoted by this Court*, 394 U.S. 11, at 65 n. 84, clash with the Master's patent error, "nature and origin is immaterial, although a non-fluvial origin might be a negative factor. . . ." Report, at 39.

This led to further error—failure to consider additional arguments which favored treatment of the islands as part of the mainland, if only one factor did not favor assimilation. In note 84 of the *Louisiana Boundary Case*, 394 U.S. 11, at 65, this Court had referred to several important authorities, one of whom was the eminent Dr. G. Etzel Pearcy, formerly the Geographer of the Department of State. Dr. Pearcy had pointed to a single factor, mentioning the distance from the mainland, as a point which could alone result in practical treatment as part of the mainland.

> ". . . They may be near, separated from the mainland by so little water that for all practical purposes the coast of the island is identified as that of the mainland." 394 U.S. 11, at 65 n. 85.

It is impossible to reconcile Dr. Pearcy's statement (which utilizes only *one* factor) *and the Court's approval of it* with the requirement that *all* factors must be satisfied. The Master's holding is also irreconcilable with the Court's quotation of Shalowitz that each case "must be individually considered." 394 U.S. 11, at 65 n. 85.

The incorrect interpretation of the Court's opinion also resulted in disregarding the more than 100 years of American and international practice concerning islands which are treated as part of the mainland because they are less than 10 miles from shore and from each other. This practice included a decision of this Court. Reference is made to *Louisiana v. Mississippi* in which the Court expressly recognized that Mississippi Sound was

> . . . an enclosed arm of the sea, wholly within

> the United States, and formed by a chain of large islands, ... 202 U.S. 1, at 48.[59]

The reasoning which followed this remark was that "the openings . . . are neither of them 6 miles wide."[60] The fact that this treatment of the island-enclosed area by the Supreme Court was a treatment of the sound as inland water is admitted elsewhere by the government to have been a classification as inland water. See *Brief for United States in Support of Motion for Judgment on Amended Complaint* in the Supreme Court of the United States, October Term 1957, No. 11 Original, *United States v. States of Louisiana, et al.*, at 254. Nor was the Court's treatment of Mississippi Sound a de novo matter, as more extensively treated in Appendix I, at 63-126. The United States had long recognized in its foreign relations that Spanish claims, British claims, and even modern Cuban claims based on similar reasoning were valid.

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[59] Contrast this to the hypertechnically logical but realistically unsound analysis of the juridical character of Mississippi Sound in U.S. Exh. 416D, Chart 1267, wherein the government now maintains that there are parcels of international waters within Mississippi Sound although they are wholly surrounded by territory of the United States. We are concerned with whether islands should be realistically treated as part of the mainland.

[60] The practice was expanded to a 10-mile standard later as hereinafter discussed. All island openings in contest are markedly less than 6 miles—some are measured in mere feet. See the 1,600 and 500 foot openings of the islands at Southeast Pass compared to the miles of distances which did not deter Judge Maris from assimilating non-highway connected islands to the mainland. See Figures 34 and 35, Appendix I.

When in 1950 it came time for the government to demarcate the precise extent of inland waters recognized by it as forming the outer limit of state properties along the coast, to apply the decision in *United States v. Louisiana*, 339 U.S. 699, a well-established rule of international law existed which was then applied in highly publicized maps. In the meantime, since 1906, the 10-mile standard had become established to give greater precision to the principle this Court had recognized in 1906. This resulted from the work of the eminent Geographer of the Department of State, Dr. S. W. Boggs, and the position of the United States at the Hague Conference. In fact, the standard had, by 1950, been officially applied to the entire United States coast. See Proudfoot, *Measurement of the Geographic Area of the United States*, 33 (1946) in his discussion of the official remeasurement of the United States in 1940 pursuant to the mandate of Congress in connection with the 1940 census. See also the maps attached thereto, Plate 8, *Proudfoot, op. cit.*, p. 45 showing that by use of mudlump island headlands, this official measurement of the territory of the United States closed off Garden Island Bay, using the Southeast Pass mudlump islands. It also closed off all of the other bays of the Mississippi Delta consistent with the headland contentions of Louisiana on the use of islands. See especially the treatment of East Bay as inland waters therein and treatment of Caillou Bay as inland waters. Proudfoot stated *op. cit.* at 33,

> A solution for the problem of setting outer

> limits for the United States was obtained by special adaptations, pertaining to embayments and islands, of the excellent principles established by S. W. Boggs, Geographer of the Department of State, in delimiting the territorial waters of the United States.

This statement with respect to territorial waters was explained in a footnote at that point as stemming from Boggs' article on delimitation of the territorial sea as proposed by the United States at the Hague Conference. It pertained to demarcation of the baseline for commencing the measurement of the territorial sea, essentially the same problem now before this Court. One of the standards adapted from the Boggs' article explaining the position of the United States at the Hague Conference was

> . . . two or more islands less than ten and more than one nautical mile from shore shall be connected by a straight line or lines, and other straight lines shall be drawn to the shore from the nearest point on each end island. Proudfoot *op. cit.* 33.

This history of dealings with the British, Spanish and Cuban governments; this history of the Court's recognition of the inland status of Mississippi Sound due to the six mile island assimilation test; this history of the 10 mile islands as mainland test that grew out of United States practice reported at the Hague conference; this history of actual application of the standard by the agency charged with officially measuring the territory of the United States—these historical realities compelled recognition that the waters behind islands along the coast of Louisiana were part of the mainland. The 1950 demarcation of inland waters recognized by the United States was confected and put on publicized maps, maps which treated the islands of the Mississippi Delta as part of the mainland and which treated Caillou Bay and the other island headlands claimed by Louisiana as part of the mainland. Thus, it was not some act of largesse, but established practice under international law long-recognized and applied by the United States. See 1 *Shalowitz*, 161, wherein there also appear excerpts from a memorandum of the Coast and Geodetic Survey which was cited with approval by this Court, 394 U.S. 11, at 65-66 n. 85.

One of the principles quoted by the Court from the memorandum (that the coastline should embrace islands which are sufficiently enclosed to constitute inland waters) immediately followed Shalowitz's expression of the particular standard for measuring sufficiency of enclosure,

> . . . so closely grouped that no entrance exceeded 10 nautical miles . . . . 1 *Shalowitz*, at 161.

That formula was the basis for 18 years of recognition by the United States in this litigation that all of the Louisiana coastal islands formed sufficient enclosures for intervening waters to be part of the mainland, that is, inland waters.[61]

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[61] See 394 U.S. 11, at 42: "The theory of the Convention, it is argued, reflects a long-standing principle of interna-

The waters between islands that are assimilated to the mainland and the physical mainland are known as straits leading to inland waters. See 1 *Shalowitz*, 108 n. 7, cited *supra*. Mr. Shalowitz, Dr. Pearcy, the Department of Justice, the Department of State, and the U.S.C. & G.S. specifically determined that each of the Louisiana island situations fits the exceptional situation, that is, they created *a sufficient enclosure to enclose inland waters or formed an integral part of a landform*, and thus created straits leading to inland waters. See the portico and landform illustrations in Figure 25, 1 *Shalowitz* at 162. Shalowitz stated that

> The second part of the recommendation (the exceptional part) deals with situations *characteristic of the Louisiana coast*. . . . It was the basis for drawing the Chapman line. [Emphasis added.]

This passage referred to the recommendation in the quotation of an April 18, 1961 memorandum from

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tional law—that bays and other inland waters are practically assimilated to the dry land and treated *for all legal purposes as if they were a part of it*." [Emphasis added.]

After an extensive consideration of the history of the Convention's provisions, this Court accepted Louisiana's argument, holding that the low-tide elevations in controversy were to be treated as though they were within three miles of the mainland by reason of the fact that they were within three miles of inland waters, although more than three miles distant from corporeal "land." 394 U.S. 11, at 42 *et seq.* The very word "inland" means *in* land, thus any formula for determining whether islands are realistically part of the mainland is also a formula for determining the status of the intervening waters. The converse is equally true.

the Director of the Coast and Geodetic Survey, found at 1 *Shalowitz* 161, quoted by the Court as support for its own views in note 85, 394 U.S. 11, at 65. *The Court* referred to the sufficiency of enclosure and integral part of a landform tests not as mere *factors*, but as *a rule for the assimilation of islands to the mainland*.

> The Director of the Coast and Geodetic Survey, Department of Commerce, has stated the following rule for the assimiliation of islands to the mainland . . . .394 U.S. 11, at 65 n. 85.

The rule the Court quoted thereafter had a precise formula used to confect the 1950 line. The formula was stated on the same page from which the Court quoted the enclosure-landform rule above:

> . . . the principle followed in drawing the baseline was that waters enclosed between the mainland and offlying islands which were so closely grouped that no entrance exceeded 10 nautical miles in width were considered inland waters. 1 Shalowitz, *Shore and Sea Boundaries*, at 161.

This formula—the 10 mile assimilation test—is consistent with factors this Court spelled out, for the geomorphics of the matter are that it automatically takes most of the factors into account. Certainly, it gives precision to the "relationship to the coast" and "distance" factors, and even some effect to the shape, size, and utility standards.

Errors of Law Contributed to Erroneous Appraisal of Island Assimilation Evidence

This misinterpretation of the guidelines the Court

established, and of important legal aspects on realistic treatment of islands as part of the mainland, combined with the other legal errors mentioned above obviously influenced appraisal of evidence for several areas. Indeed, the Master made plain that in his mind the cumulative set of factors all had to be satisfied and failure to meet even one would defeat assimilation. See, *e.g.*, Report, at 37.

Evaluation of evidentiary detail can be colored by the major legal thrust of a decision. This appears to have led to errors in appraising island-headland evidence. There was a failure to consider adequately the precedent of Judge Maris' Florida Keys decision for comparatively evaluating Louisiana facts. See Appendix I, Figures 34 and 35. Further error is found in failing to give effect to the factual identity of *The "Anna"* to the Louisiana facts. Inconsistency is present as to the western headland of Atchafalaya, where all of the factors approved by the Master are satisfied, but yet the headland is rejected. The clear approval by this Court of the "integral part of a mainland form" concept of Shalowitz was not recognized as having anything to do with configuration of the Southeast Pass islands which are so nearly identical to the illustration found in 1 *Shalowitz* 162. See Figure 14, comparing the Court-approved Shalowitz conception of islands as part of a mainland form with La. Exh. 19, a photograph of the Southeast Pass lumps.

Thus, while articulating the "relationship to the configuration or curvature of the coast" factor of this Court's opinion, the Master in fact

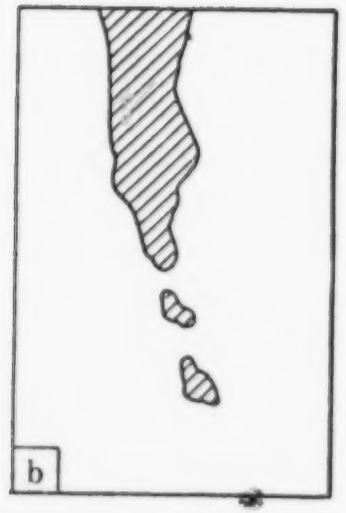

Figure 14. Comparison of figure 25(b) from 1 *Shalowitz* 162 demonstrating islands as part of a mainland form with La. Exh. 19, a photograph of Southeast Pass mudlumps.

failed to give weight to it. See Report, at 41, 42, where the Report refuses to consider the Southeast Pass tight group of islands "all together," and denies significance to the fact that some of the islands lie across the coast even the government recognizes. Moreover, as to the outermost island of a group, the Report treats the distance factor as though no intervening islands were present. This rationalization further ignored other powerful facts of relationship. See, *e.g.*, Figure 14, *supra*.

Further error relates to the failure of the Master to accord any weight to the fact that an island is not in isolation but is rather a part of a tight group of islands in line with a mainland form on its natural extension. See Report, at 41 where the Master rejected reasoning that the proximity of islands within a group to an island which clearly formed part of the mainland was irrelevant, and compare that statement to the "relationship" directive of the Court. The relationship factor was mentioned in an ultimate conclusion, but its geographic meaning in fact escaped application, for certainly the "grouping" of islands in line with a mainland form relates an island therein to the mainland.

Shalowitz would soundly disagree with the erroneous conclusion of the Report at 41-42 that islands near the mouth of a bay should not have the bay line extended around them.

Shalowitz was willing to do it for a single island that was not even touched by the dashed

closure line that would be recognized absent the island. See Figure 15. This Court has itself given importance to the question of whether a closing line would touch an island and create mouths. 394 U.S. 11, at 59-60. If the islands at Southeast Pass are not a part of the mainland, whether or not they form a "screen," Shalowitz recognizes the line should be extended around them. See also the inconsistent factual finding that the first of the series of islands is crossed by the bay line, Report, at 41, with the finding, Report, at 42, that they are not located along the misnamed "natural" closing line of the bay. In fact, more than one island is touched by the closing line, at least one other low-water elevation is touched, and two are totally within the line. Certainly, this causes the group to have a special relationship to the coast.

No navigator would enter the bay in the less-than-one-foot water depths between the islands and low-water elevations. From earliest times mudlumps have been used as navigational entrance points. See the 1839 Talcott map in La. Exh. 23 showing the

Figure 15. Reproduction of figure 45 from 1 *Shalowitz* 225 demonstrating a bay closing line encompassing a single island that lies entirely seaward of the closing line that would be used if no island were present. See also related text in 1 *Shalowitz*.

high elevation of the mudlumps, and the way stakes with markers were present on them. Clearly, realistically the outer lump forms the natural entrance point, and realistic concern is the test.

If this were not so, the mudlumps would form multiple mouths. Incidentally, the Report misstates Louisiana's argument to be as characterized by federal argument—a screening island argument. This is not so. Louisiana maintains there is no "screening" "requirement" for closing lines at the mouth of a bay. See Article 7(3), where it is implicitly recognized that islands *outside* of a bay closing line create multiple mouths for it is provided that islands *within* an indentation shall be treated as part of the water area of an indentation. No "screening" test is given. See the interpretation of this Article by this Court, 394 U.S. 11, at 60 and the interpretation in 1 *Shalowitz* 225 n. 38, wherein Shalowitz discusses the International Law Commission background and reasons underlying Article 7 in support of his illustrations, Figures 44 and 45:

> The basis for this interpretation is the observation of the ILC that the presence of islands at the mouth of an indentation tends to link it more closely to the mainland (*see* text following note 29 *supra*). *It would seem to follow that where a choice of lines exists that line be selected that encloses the greatest area of inland waters. This is consistent with Art. 7, par. 5 of the convention which calls for a closing line to be drawn that encloses the maximum area of water possible,* and with par. 3 of the article which allows islands

> within an indentation to be considered part of the water area. The rule proposed would still leave unresolved the question of how far seaward from the headland line islands could be in order to be incorporated under the rule. The best solution would be to consider each case on its merits and apply a rule of reason. 1 *Shalowitz*, 225 n. 38. [Emphasis added.]

The evidence for the suitability of the headlands claimed by Louisiana is more extensively set forth in Appendix I, for the different bay closures as indicated below. Those summary arguments are adopted herein as though repeated in extenso, and only selectively supplemented below. See also Appendix III for a synopsis of bay closing line contentions.

For Atchalafaya Bay, see Appendix I, at 210-220 and 308-312.

The evidence at Atchafalaya Bay included expert opinion testimony by a geographer that the Shell Keys complex is part of the mainland and the western natural entrance point of the bay.[62] Massive quantities of photographs were submitted. Measurement data was presented in the testimony of the engineer, Mr. Whitaker, on treatment of this tight maze of low-water elevations as part of the mainland. Much of this evidence simply escaped the Master's attention, perhaps due to the illegible character of the cartographic symbols for low-water elevations. In each case the size and location

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[62] See testimony of Dr. Melamid, tr. 3305-3306 and La. Exh. 192, Photos 18 and 21.

of the elevations make it impossible not to realistically view them as extensions of the mainland, if the map were clear. We believe the Master could have reached this conclusion only by erroneous map reading. He must have failed to recognize the dotted and difficult-to-discern low-water lines of the low-water elevations on the Set of 54 Maps in this area. He must have thought that all Louisiana was talking about was the more distant high-water elevation (island) at the extreme tip of the Shell Keys complex shown by solid, easy-to-discern lines which show only small, more distant high water peaks of the much more extensive low-water elevations. The low-water elevations of the Shell Keys complex run from their outer extremities all the way back to the shoreline of Marsh Island and are, at their closest point, separated by only the narrowest and most insignificant of shallow channels. The closest low-water elevation has an area separating it from shore which is minuscule compared to the area of the low-water elevation, as is the distance separating it from shore compared to the size of the low-water elevation. The more seaward water gaps are not significantly larger between the low-water elevations. However, it is not necessary to consider the full extent of the Shell Keys. The low-water elevations closest to shore are identifiable headlands. Mound Point, the outer point of Marsh Island, if the reef extension is disregarded, is itself an identifiable headland.

The western headland of Atchafalaya Bay is Marsh Island and its natural extension, the Shell Keys complex. This Court has ruled in favor of California in deciding that where there is a pronounced land feature, the outermost extension should be selected as the natural entrance point thereon. See decree in *United States v. California*, 382 U.S. 448, at 451:

> In drawing a closing line across the entrance of any body of inland water having pronounced headlands, the line shall be drawn between the points where the plane of mean lower low water meets the outermost extension of the headlands.

Clearly, the Shell Keys complex is the outermost extension of Marsh Island. In any event, clearly Mound Point, not South Point, is a more outward extension of Marsh Island than South Point. Clearly, the Master erred in treating Louisiana differently than this Court treated California.

Furthermore, "size and location,"—the two criteria which the Master held Shell Keys and Point au Fer failed to meet, Report, at 52-53—are the least important of the illustrative (not mandatory) criteria which this Court suggested for his guidance. As heretofore stated, the Court's previous opinion relied heavily upon the British Court's decision in *The "Anna."* That decision expressly styled the islands in question as "*little* mud islands" but held that factor to be insignificant.[63] The island gaps of Shell Keys are quite small. The majority are 80 to 400 feet; the largest opening is 2,350 feet. See La. Exh. 188 B. *The "Anna"* islands were 2.5 miles from shore.

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[63] Moreover, S. W. Boggs, one of the authorities cited approvingly by the Court, denigrates size as a test, stating "[t]he size of the island, however, cannot in itself serve as a criterion. . . ." *quoted in* 394 U.S. 11, at 65 n. 85.

The Shell Keys complex clearly meets other more significant criteria for assimilation suggested by this Court. The Master gave no weight to the fact that the "depth and utility of the intervening waters" throughout Shell Keys is negligible. Moreover, the oyster reefs upon which the islands and low-tide elevations composing the Shell Keys complex are located, are clearly fluvial in nature and origin, and present ecology. These reefs developed on the deltaic lobes of a former outlet of the Mississippi River. See La. Exh. 173, at 22. Their initial growth and their continuing, present-day life were and are dependent upon a supply of *fresh water and nutrients from* the mainland. Therefore, the islands and low-water elevations of the Shell Keys complex are geologically and biologically appendages of the mainland.

In sum, numerous key factors or comparisons to precedent were not applied and mandate assimilation of the Shell Keys and Point au Fer reef headlands, *e.g.*, negligible depth, non-utility of the intervening waters, larger size of the low-water elevations as compared to the gaps, small distances of the gaps as compared to other gaps in recognized assimilation precedents (*e.g.*, Florida Keys and St. Bernard Peninsula), relationship of the island configurations to each other, the massive number of the islands and low-water elevations, non-navigability, their assimilation to the mainland on charts, their portico effect, the sufficiency of the enclosure, the fact that they are a natural extension of a mainland form—all of this is substantiated in the record. See Appendix I, at 210-220,

308-312. Nature, origin, and present ecology are related to fluvial and mainland phenomena. The Master did not consider this mass of factors, although the Court had directed there was no limit on additional factors to be considered, simply because he found that one or two factors were negative and he viewed the law as therefore commanding that he ignore others.

The Master has recognized that the landlocked question should be considered

> . . . upon the basis of relationship between the width of . . . mouth to . . . depth . . . . Report, at 27.

This is a wholistic test, and contradicts the "landlocked" rationalization of the rejection of Mound Point as a headland. Waters at the center of the closing line and near the mouth of the closing line of *every* bay are not landlocked. It is the bay as a whole which we consider in determining whether the characteristic of landlocked is present. See Article 7 (2) of the Convention, which tests the question of landlocked by a consideration of depth of penetration in relation to width of mouth:

> . . . whose penetration is in such proportion to the width of its mouth as to contain landlocked waters. . . .

See U.S. Exh. 416D for many examples of less pronounced closures at more outward locations which were accepted by all federal agencies in lieu of a more pronounced inland headland pursuant to the principle of the decree in *United States v. California* quoted *supra* requiring use of the outermost extension

of a headland. A good example of this is found at Demarcation Bay in Alaska which is the subject of Figure 13 *supra*. The area in front of the foreshore of the low-water spit within the bay closing line shown in that illustration can hardly be deemed landlocked if viewed in isolation. Other illustrations abound. Thus, it is invalid to dismiss headland claims on the basis that use of a particular headland would result in the enclosure of some waters that are not landlocked.

As to the Point au Fer low-water elevation, the Master relegated to insignificance the very strong fact that the water intervening between the low-water elevation and the mainland is an oyster farm where inland-type mariculture is practiced and navigation is impractical and dangerous. Oyster farming in Louisiana is a peculiarly inland phenomena of our coastal bays. Thus, again the presence of unique and strong facts was ignored merely because a single factor of distance was allegedly not satisfied.

Turning to the Garden Island-Red Fish Bay and Blind Bay complex, both of which are so much governed by the question of the use of the Southeast Pass mudlump islands as a headland, we direct the Court's attention to general discussion *supra*, pp 116-135, and to Appendix I, at 260-271, which details substantial evidence and summarizes it from various exhibits and testimony in the record. These mudlumps are integrally parts of the Mississippi River natural levee landforms and are to be treated as part of the mainland.

Additionally, they serve as appropriate natural entrance points. Thus, in Figure 35 of Appendix I, at 270, the miles and miles of open water involved in Judge Maris' findings between islets are contrasted to the 500 to 1600-foot distance of waters gaps at Southeast Pass. Hydrographic survey information is presented, Figure 33, showing less than a foot of water between the openings and the continuous submarine character of the natural levee or mainland form upon which the mudlumps are situated here and everywhere else where they occur. Their relationship in shape to the mainland and to the configuration of the coast has been heretofore illustrated. The fact that they are characteristically incorporated into the mainland over time, as developed in the testimony of the geologist and specifically illustrated in Figure 30, Appendix I, at 261, was another factor overlooked. The factual identity with *The "Anna"* was overlooked. The fact that some of the mudlumps were within the closing line the government recognized and others were crossed by it was overlooked. The testimony showing they formed a portico and an extension of a mainland form which the Court deemed a significant factor, 394 U.S. 11, at 65-66 n. 85, was overlooked. The utility of the islands as navigational entrance points because of their visibility and the dis-utility and the danger of shallow intervening waters were overlooked. Certainly, if utility of intervening waters or danger to navigation are factors to consider in terms of navigational significance, then the fact that mudlumps are used by navigators as entrance points should be a highly persuasive factor. All

of these factors and others more fulsomely detailed in the discussions referred to above were rejected because merely 2 out of 8 or 9 relevant factors were found to not be satisfied here. Plainly, this is a case where misconstruction of the Court's opinion has resulted in erroneous ultimate fact conclusions, which are noticeably void of reference to details of evidence.

For other evidence of the Bucket Bend Bay area, see Appendix I, at 254-260 for a summary of evidence contradicting the Master's findings. The islands here are purely sedimentary and are classic examples of islands that are a natural extension of a landform, which are indeed normally incorporated into the landform, absent hurricane attack. See Figure 27, Appendix I, at 255, showing how it is characteristic of these river mouth islands to become consolidated into the mainland. The Report denies any consideration to the ultimate question of whether the islands are realistically to be treated as part of the mainland. Certainly, the Court will find that these islands realistically ought to be considered as part of the mainland from which they come and to which they will be joined.

Bucket Bend Bay presents an instance where the complete absence of references to the record is conspicuous. The Report at 37 simply states, without explanation, that the low-water elevations at Bucket Bend Bay do not satisfy the size, distance, shape, or relationship factors the Court mentions, and says there are no other criteria which would lead to a contrary conclusion. Reasons, facts, evidence in the record—nothing is cited in support of these insupportable con-

clusions, for nothing could be cited. As to size, these elevations are certainly no smaller than the islands in *The "Anna."* As to the *distance* from the mainland, they are a petty fraction of 10 miles, a minor percentage of 6 miles, minuscule compared to the 4,000 feet to multi-mile gaps of Judge Maris' opinion, and smaller than other island gaps which the Master assimilated, *e.g.*, at Caillou Bay. But somehow, here, minor distances are too great. The greatest gap is approximately 1,000 feet, the smallest less than 700 feet. As to shape, they are plainly a projection of a mainland shape, with a river mouth island shape this Court has heretofore favored. 394 U.S. 11 at 65 n. 84. As to relationship, if ever there was an extension of a landform, a sedimentary projection along a natural levee, the submerged river bank, is such a thing. As to the alleged absence of facts relating to other imaginable criteria, the river mouth character, the origin from the mainland, the fluvial nature, the *shallowness and non-utility of intervening waters*, the tendency to become incorporated into the mainland—none of these would, in the Master's Report, have anything to do with the matter.

This Court can form its own opinions. This it should do, to be sure that its guidelines to Masters are in fact followed. See *Mississippi v. Arkansas*, ____ U.S.____, 94 S.Ct. 1046, at 1049 in which this Court conducted its

> own consideration and . . . independent review of the entire record . . .

in a review of exceptions to a Special Master's report.

FIFTH EXCEPTION

CARTOGRAPHIC AND SURVEY QUESTIONS

The State of Louisiana further excepts to the Special Master's errors affecting several cartographic and survey questions in the Mississippi Delta such as not giving full effect to pre-December 6, 1969 chart configuration and failing to correctly find the times of the existence of certain islands, low-water elevations, or low-water areas.

Several cartographic or surveying oversights or errors occur in the Master's Report, which we have generally elaborated upon elsewhere.

For East Bay, we argued that the pre-December 6, 1969 chart configuration of Cowhorn Island should control even after that date, due to unreliability of post-hurricane survey related change, and for other reasons, see *supra* at 102-113. These arguments also apply to the low-water areas near Pass du Bois and Pass Tante Phine. See paragraphs (c), (d) and (e), Report, at 47 to which exception is taken for the same reasons argued for East Bay.

Additionally as to paragraph (e), Report, at 47, even the federal evidence showed the Pass Tante Phine spit was in existence prior to March 28, 1956, although the Master found it existed only for a few months from November 19, 1959, to February, 1960. See application of Gulf Oil, Sheet No. 1 of 14 sheets, dated March 28, 1956, U.S. Exh. 171, and compare to the Pass Tante Phine spit on the 1959 low-water survey maps. As to the finding paragraph (d), concerning termination of

its existence, see later photographs showing a part of it. La. Exhs. 44 and 45.

This is typical of the weak quality of the federal survey evidence relied upon by the Master in support of his conclusion and for which careful examination is necessary. The 1956 map of the existence of the spit also effectively refutes the claim that it could have only existed for a few months, as federal testimony had claimed, which was the apparent basis for the limitation of the time period afforded to it by the Master. The existence of the spit from March 3, 1956, until the aerial photographs of November, 1959, and February, 1960, should also have post-February, 1960 consequences for it demolishes the reasoning that such a landform is rapidly extinguished by natural forces.

The errors as to survey findings of the Report at 43 are contradicted by evidence summarized in Appendix I at 271-6, treating the South Pass mudlump problems. The islands should be recognized as having existed at all relevant times. See the mass of evidence summarized in Figure 36, of Appendix I, at 272.

See also the Caillou Bay discussion *infra*, concerning incomplete survey matters.

Exception is also taken to failure of the Report to correctly give effect to the erosion of the Joseph Bayou area and other changes in East Bay. See East Bay discussion *supra*.

SIXTH EXCEPTION

CAILLOU BAY

The State of Louisiana further excepts to the Special Master's conclusion that although he finds that Caillou Bay is in fact a juridical bay, the decision of this Court precludes his so holding.

We have earlier treated the fact that Caillou Bay is an historic bay. These arguments relate to those portions of the Master's Report which appertain to the juridical contentions of Louisiana, but indirectly support the historic claim. The historic facts also support the geomorphic claim for they plainly show Caillou Bay was once physically part of the mainland, and Isle Derniere a continuous land form. See La. Exhs. 185A and 185B.

The Master correctly found that the geographic-geomorphic circumstances, even present circumstances, of the Isle Derniere amply satisfied both the factors set forth by this Court, 394 U.S. 11, at 64 and the Master's more stringent standards on realistic treatment of islands as part of the mainland. Report, at 37. Under the procedure of this Court whereby the parties are to except to the portions of the Report with which they disagree, it is not incumbent upon Louisiana now to substantiate correctness of the Master's holding here which we shall do more fulsomely in our reply brief if his findings are challenged by the government.

Much evidence was available to the Master and not heretofore available to the Supreme Court. This included proof of serious error in the maps which were

used in government illustrations that led to the comment contained at note 88 of the Supreme Court's 1969 opinion, 394 U.S. 11, at 67.[64] The Court, obviously overlooking the arguments of Louisiana concerning the fact that the Isle Derniere was part of the mainland, mistakenly observed that no such arguments had been made by Louisiana. Clearly, then, in the review of the extensive briefs filed by both parties heretofore, oversight no doubt occurred in which the Court apparently based a conclusion on an erroneous assumption that the point had not been argued. The point *had been argued.* We reproduce here portions of the *Reply Brief* of Louisiana to the *Brief of the United States on Cross Motion for the Entry of Supplemental Decree No. 2* as to the State of Louisiana, filed September, 1968:

> We do wish to point out here however, that the federal explanation for not departing from its prior concessions to the effect that all of the waters between and behind islands off the Louisiana shores are sufficiently enclosed to constitute inland waters, applies with equal force to Caillou Bay, irrespective of whether it is a true bay, a strait leading to inland waters, or inland waters by whatever test. The Chapman Line recognizes

[64] It must be remembered that up until this phase of the litigation the United States recognized that the islands along the Louisiana coast enclose inland waters. This could account in part for the lack of stress on the fact that the islands at Caillou Bay formed part of the mainland. The United States only changed its position after the adoption of the Convention. Louisiana should not be deprived of its inland waters which the Master found Louisiana was entitled to under the evidence, except for certain language of this Court made before a complete hearing on the evidence.

this waterbody as a bay and it has never been in dispute in this litigation until the rather surprising change in the federal position in its memorandum of January 19, 1968. We can understand that it was rather surprising to those charged with drafting the federal position on the closing lines between the Isles Derniere to find that the new federal theory called for not closing between the last several islands of the Isle Derniere chain, *because it is so clearly reasonable and sound to connect islands separated only by a foot or so of water or less; islands which so plainly form a portico to the mainland and which are such a clear, natural extension of the mainland, anyone merely looking at the map would realize that they must somehow have the effect of causing the waters behind them to constitute inland waters because of the great extent of the enclosure.* One can understand that it would be essential for the government to change its position at Caillou Bay in order to avoid recognizing basic principles that are unquestionably applicable . . . . [Emphasis added.] pp. 121-122.

The government itself recognized in the Statement of Issues that this was an open issue. See Report, Appendix A-1, at 60, Issue 11 (a). Louisiana will be materially prejudiced by the 18 years of the federal assertion as to the limits of inland waters in the Caillou Bay area and the federal recognition that the islands forming the Isle Derniere group were juridically part of the mainland, unless the finding of fact of the Master that Caillou Bay is a juridical bay is adopted. In essence, this prejudice relates to the fact that Louisiana had not theretofore insisted on the correct survey

of low water lines on the north or bay side of the islands; or upon similar survey of the supposed water-gaps, to show that they were in fact not water gaps, but continuous mainland. If the federal government takes exception to the finding at Caillou Bay that the islands are part of the mainland, then, in reply, we will fully treat evidence showing the prejudice. See 1 *Shalowitz*, 175 where Shalowitz explained that a reason for failure to resurvey the 1954 photography areas west of the Mississippi Delta was

> . . . the absence of possible dispute over the Chapman line . . . .

In an attempt to rectify this injustice, the Master has said that the claims of Louisiana as to additional land behind the islands must be accepted. The dynamics of change on oil accountings since 1950 are not noted. The prior assertions prevented Louisiana from discovering the full extent of land behind the islands. We cannot now possibly show what we would have discovered through 1954 field work or 1959 surveys not made. There is no way to fully prove what we might have discovered if we had conducted surveys we did not conduct; if we had conducted investigations we did not conduct; if we had demanded a new survey of the area we did not demand; if we had obtained agreements on coordinates on the back side as we did on the front side; if we had conducted aerial patrols over the years. In short, we contend that the extent of the area Louisiana is entitled to as a consequence of islands within the bay for which no survey was made and no agreement

reached should be the entire extent of area which we would be entitled to by recognition of the closing line. It was at least the government's burden to prove there was no land beyond the limits of the low-water survey of 1954 and of 1959. This they were estopped from proving. This, in fact, they did not even attempt to prove. The Louisiana evidence stands unrefuted, that there were undetermined extents of land, that the exact extent of which can not now be reestablished. Necessity to rectify this injustice will be avoided if recognition is given to the fact that Isle Derniere is an extension of the mainland, not only in front of Lake Pelto but also in front of Caillou Bay, as found by the Special Master in determining that Caillou Bay is a juridical bay.

Whether or not the Court rules that Caillou Bay is inland waters, the island assimilation question will affect three-mile projections.

CONCLUSION

HAVING CONFIRMED FEDERAL TITLE TO THE GREAT MASS OF THE CONTINENTAL SHELF, CONGRESS DID NOT INTEND TO BE PETTY ABOUT COAST LINE MINUTIAE

In leaving the subject of the many marginal technical questions concerning coastline determination, it is appropriate to observe that this Court should not have to be belabored with the technical conflicts engendered by unremitting rigidities of the federal position.

From a national perspective, the federal government is receiving the vast bulk of the resources of the Continental Shelf and the great majority of territory and financial benefits which have accrued and are to accrue. See map and data, "Annual Drilling and Production Report," *Offshore*, Vol. 34, No. 7, June 20, 1974, at 77 *et seq.* reflecting the vastly greater participation of the United States in the offshore resources than that of the State of Louisiana.

Congress gave the vast bulk of offshore territory and resources to the national government in the grand division of the Continental Shelf made by it in the en-

actment of the Submerged Lands Act and the Outer Continental Shelf Lands Act. It therefore did not intend that there should be parsimonious interpretations of technical coastline details that are highly important to the states but insignificant from the national perspective. See also the accountings reflecting that Louisiana has received merely 37 million dollars from the escrowed account in the Treasury and the federal government has received more than 1.3 billion dollars plus many additional billions from Zone 4 revenues, plus free use of the remainder of the escrowed funds to date. See *Motion by the United States for Leave to File Accounting and Accounting by the United States* dated December 20, 1971, and earlier accountings by the parties stemming from the December 13, 1965 decree.

The effect of the Tidelands coastline controversy on state-federal relations is not, from a national perspective, worth the relatively small value of the remaining lands in controversy. Those estuarine lands are highly important to each state, however, both monetarily and environmentally. Much healing would be accomplished in state-federal relations through a reasonable interpretation of the coastline problems. Perhaps as important, other states in this energy-short era will not be led to resist offshore development out of fear that it will presage a sophisticated and intensive federal attack on the maritime territorial limits of the state. Serious negative implications arise as to the impact on the power of states to protect their coastal environment and other vital coastal interests other than petroleum revenues. Coastal management

needs, such as Louisiana has for the new Atchafalaya Delta, make our territory important for more than monetary reasons. See also the many coastal wildlife preserves, *e.g.*, Marsh Island and Pass a Loutre Game Preserves, boundaries of which are at stake. La. Exh. 8.

Even the funds presently in escrow are, in the main, to be awarded to the United States, even if Louisiana were *entirely* successful in the present hearing on the Special Master's Report. This is for the reason that the decree of December 20, 1971 (382 U.S. 288, awarding tens of thousands of square miles of territory to the United States), excluded so-called split leases (divided by the lines of the decree) merely to postpone administrative accounting and lease maintenance problems until the total resolution of this controversy. At that time amity will be required to resolve the problems unless we are to find ourselves in this Court contesting every detail of well locations, unit boundaries and lease administration questions that arise. Even if this Court were to recognize *all* of Louisiana's remaining claims, still its resulting judgment would give the bulk of the escrow account to the United States, but eliminate worrisome future problems. For example, if Louisiana's historic claims are recognized, then the kinds of survey problems and shoreline change questions which have so complicated the East Bay controversy will not arise again. Otherwise, they will be continually repeated, especially if the shore of the bay is used as a baseline. See testimony of Dr. Melamid, the Professor of Eco-

nomic and Political Geography from New York University, tr. 3246-3268, commenting upon the superiority of the more stable boundary regime which inland water classification affords in the context of the Mississippi Delta and Caillou Bay.

Congress, in writing the Submerged Lands Act was aware that it had awarded the lion's share to the national fisc in a separate act, the Outer Continental Shelf Lands Act, as the map in the *Offshore* journal so dramatically demonstrates. In this broader context, this Court should not be burdened with the effort of the Department of the Interior to get every last drop of oil and every last dollar it can prevent from going into state fiscs, by persistent technical positions on areas that are so important to the state and so minor on the national plane. It is well to recall the words of the former Solicitor General, the Honorable Archibald Cox, in the opinion approved by the then-Attorney General of the United States, the Honorable Robert Kennedy, reflected in La. Exh. 27, at 28.

> Congress was not in a niggardly mood, holding out every bit of land that it could find an excuse to retain.

Respectfully submitted,

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PROOF OF SERVICE

I, the Attorney General of the State of Louisiana, certify that copies of the foregoing exceptions to the report of the Special Master, and brief, and related appendices have been properly served on the 29th day of November, 1974, by mailing copies, sufficient air mail postage prepaid, to the Solicitor General and to the Attorney General of the United States, Department of Justice, Washington, D.C. 20530.

/s/ William J. Guste, Jr.

November, 1974.
B-4817, 11-74

No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,

Defendants.

APPENDIX I TO THE EXCEPTIONS OF THE STATE OF LOUISIANA TO THE REPORT OF THE SPECIAL MASTER FILED JULY 31, 1974, AND BRIEF IN SUPPORT OF EXCEPTIONS

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No. 9, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1973

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,
Defendants.

ERRATA TO LOUISIANA'S MOTION AND MEMORANDUM DATED MAY 13, 1974

Certain minor typographical errors occurred in Louisiana's May 13th filing and these errata are submitted as corrections thereof.

I.

In the Memorandum the following corrections are indicated.

1. At page 16, the citation for the quotation at the top of the page reading "394 U.S. 11, 78 n. 104" should read "394 U.S. 11, 77 n. 104."

2. At page 22, at the bottom of the top paragraph, the last sentence reading "Notes 28 and 30, 394 U.S. 11, 24, 30. . ." should read "Notes 28 and 30, 394 U.S. 11, 24, 26. . . ."

3. At page 38, the first line of the second quotation, beginning "On the same basis," the date "1948" should be "1958."

II.

In the Motion the following corrections are indicated:

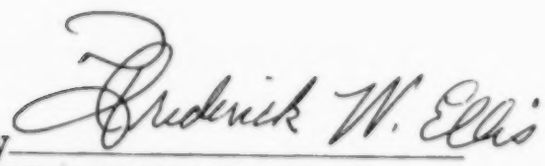
1. At page 252, the first line, "From La. Exh. 383" should read "From La. Exh. 343."

2. At page 280, Finding 48.M, the first line, "The natural entrance points of Ascension Bay. . ." should read "The outer entrance points of Ascension Bay. . . ."

3. At page 281, Finding 48.N, the second line, "as natural entrance points" should read "as outer entrance points."

Respectfully submitted,

WILLIAM J. GUSTE, JR.
Attorney General
State of Louisiana

by 
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PROOF OF SERVICE

I, the undersigned, authorized to act on behalf of the State of Louisiana, certify that copies of the foregoing Errata to Louisiana's Motion and Memorandum were hand delivered to Federal Counsel in Memphis, Tennessee, on May 27, 1974.

FREDERICK W. ELLIS

No. 9, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1973

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,
Defendants.

MEMORANDUM IN SUPPORT OF MOTION TO CLARIFY, AMEND AND SUPPLEMENT FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE DRAFT OF THE PROPOSED REPORT OF THE SPECIAL MASTER

May it Please the Special Master:

Following the suggestions of the Special Master in his letter of February 21, 1974, Louisiana is filing with this memorandum a motion to clarify, amend and supplement findings of fact and conclusions of law contained in the tentative draft of the proposed report of the Special Master.

In the reference to the Special Master, the United States Supreme Court suggested primarily that the Special Master resolve certain factual issues and find facts on which the Court could base its final opinion in establishing the extent of Louisiana's claim under the Submerged Lands Act. Such being the Court's in-

struction, it is extremely important to Louisiana to have the Special Master find detailed undisputed facts on certain issues so that the Court may consider these factual determinations along with the conclusions drawn from the facts by the Special Master. This would obviate the necessity of the Court remanding to the Special Master issues for additional findings of fact if the Court disagrees with the conclusions reached by the Special Master on particular issues where all of the facts were not detailed in the Special Master's report.

In his draft, the Special Master commented on Louisiana's proof of historic waters, "As the United States does not dispute any of the factual evidence presented in support of these allegations, they must for purposes of this report be taken as true." [1] In view of

[1]This sentence follows the statement on pages 17 and 18, which reads as follows:

> "The State of Louisiana, however, insists that both before and after the Geneva Convention, it has exercised over certain, if not all, of the disputed areas sovereignty of a type consistent only with inland waters, and that there has never been any protest either by any foreign power or by the United States as to the exercise of this sovereignty. This consists of the granting by the State of Louisiana of certain oyster and mineral leases, the regulation by it of fishing in the waters in question, including the exclusion of unlicensed vessels and in at least one instance the arrest of foreign unlicensed fishermen in those waters, the enforcement of pollution control regulations in the area, and the protection of wildlife in the area by both the State of Louisiana and the United States."

While maintaining that the acts are consistent only with a claim of inland sovereignty, because, among other reasons, the Acts were done under a juridical basis (Pollard's Lessee

the undisputed evidence on Louisiana's historic bay claims, we suggest that the Master make detailed findings of fact on such to perfect the record for the Court.

We will first consider East Bay. In approaching Louisiana's historic inland water claim as to East Bay, it is necessary to consider what the Supreme Court said in referring this issue to the Special Master. The Supreme Court stated:

> It would be quite another to allow the United States to prevent recognition of a historic title which may already have ripened because of past events but which *is called into question for the first time in a domestic lawsuit*. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in United States v. California.[2]

This means that the Special Master must determine Louisiana's historic bay claim as to East Bay when Louisiana's claim was "called into question for the first time in a domestic lawsuit."

In determining when Louisiana's claim was first called into question, we refer to the Suggested Findings of Fact and Conclusions of Law filed by the United

v. Hagan, 44 U.S. (3 How.) 212 (1845) which has been limited as appertaining only to inland waters (United States v. California 332 U.S. 19 (1947)), Louisiana disagrees with any implication that acts of sovereignty must be consistent *only* with inland classification to be effective in establishing an historic inland claim.

[2]United States v. Louisiana, 394 U.S. 11, 78, note 104, (emphasis added).

States with the Special Master by cover letter dated December 3, 1973, from which we quote:

> The United States has at all times in this litigation, since the filing of the first complaint in 1948, asserted that East Bay is not inland water within the operative meaning of that term in these proceedings. (Finding No. 6).

Accordingly, the Special Master should determine whether Louisiana's historic bay claim to East Bay had ripened into such ownership by past events at that time. Actions of the United States after that date in attempting to prevent recognition of such a historic title "would approach an impermissible contraction of territory against which we cautioned in United States v. California."

Louisiana has maintained that when Louisiana was admitted as a state in 1812, East Bay was a juridical bay. The United States, in its Findings of Fact and Conclusions of Law filed with the Special Master by cover letter dated December 3, 1973, admitted, in Finding No. 8:

> Before 1900, East Bay appears to have had such a configuration that its entrance did not exceed 10 miles in width. Since at least 1918, the entrance of the bay has been more than 10 miles wide. La. Exh. 23.

and further, in Finding No. 9, United States admits

> Nevertheless, if one applies the 10-mile closing rule until 1958 [3] and the Convention on the Territorial Sea and the Contiguous Zone thereafter, East Bay, if once a true inland bay, ceased to be a juridical bay ever since at least 1918. See the Chapman Line of 1950 which did not enclose East Bay.[4]

The closing line of East Bay as a juridical bay to 1918 between the outer natural entrance points was 8.58 nautical miles wide. East Bay landward of this closing line contained 31,588 acres. The number of acres to satisfy the semicircle test amount to 24,502, being *7,086 acres* in excess of the semicircle test. This evidence is undisputed, as is the data showing East Bay satisfied the semicircle test and had a mouth between natural entrance points of barely 11 miles from 1918 to 1956. La. Exh. 23A, and Finding 1.C and 2.M.

It would thus appear that there is no dispute be-

---

[3]United States v. California 389 U.S. 139 (1965) did *not* apply the 10-mile rule until 1958, but applied the Convention 24-mile rule and semicircle test retroactively, to determine the extent of inland waters acquired by California upon statehood in 1850 and the grant acquired under the 1953 Submerged Lands Act. The evidence is uncontroverted that at least until 1956 East Bay, between natural entrance points (Line A) clearly met the Convention tests, even by the most conservative area measurement systems. See Findings 1.C, 2.L, 21 and 22.

[4]But see the *Measurement of the Geographic Area of the United States*, Plate VIII, the congressionally sanctioned and still used study which did enclose East Bay. See Finding 6.I-N and La. Exh. 52.

tween the United States and the State of Louisiana that East Bay was a juridical bay at least until 1918, with a closing line of less than ten miles.[5] The law never restricted a bay to a width of ten miles [6] but never has

[5]See U.S. Exh. 103, letter from Dean Rusk to Robert F. Kennedy, dated January 15, 1963, stating that *prior* to the December 10, 1951 ICJ decision in the Anglo-Norwegian Fisheries case, the United States followed the "so-called ten-mile rule for bays" (emphasis added) but thereafter sought adoption by the U. N. of a 10-mile limit. This letter of the Secretary of State thus indicates that this country, in foreign relations after December 10, 1951, recognized the ICJ Decision *rejecting* the "so-called" ten mile rule as having ever been international law. Certainly, the United States, outside of oil litigation, would not have lightly continued to advocate a position in foreign relations as law which a world tribunal had declared in violation of international law; nor is it conceivable that a distinguished statesman like Dean Rusk would have refused to recognize that the ICJ ruling was entitled to respect, even retroactively. Other evidence in the record of this case indicates that while perhaps advocating a "10-mile rule in international relations," this country recognized considerably greater bay closures (See Findings 1.B, 2.B, C, D and L).

[6]The North Atlantic Coast Fisheries Case, sometimes cited as the source of the so-called 10-mile rule, in fact *did not* hold that there was a ten-mile rule of law on bays, but merely recommended that the parties specifically agree on a 10-mile limit which they did, for only *some* of the bays in question, because of the *absence* of a defined bay size limit in international law. "[T]hese circumstances (certain prior agreements or proposals by Britain) are not sufficient to constitute this a principle of international law, it seems reasonable to propose this rule..." Hague Court Reports (1910), p. 188. It was still merely being proposed in 1956, and never became law. See United States v. California 381 U.S. 139, 163-165 (1965) applying Convention standards retroactively, due to the void of clear prior limits. Thus, as per Secretary Rusk's letter, U.S. Exh. 103, noted *supra*, and the evidence of the

the United States, even in its oil claims in this case, urged a lesser limit [7] for bay closing lines.

As noted above, we have shown that the "so-called" (as Dean Rusk styled it) 10-mile rule was not a rule at all, but only a rejected proposal. East Bay, from its very first appearance on charts until at least September 17, 1956, by the most conservative of area measurement methods (specifically the method approved by the Special Master) continuously qualified as a bay behind a line connecting its outer *natural* entrance points (not using the jetties), which only slightly exceeded ten miles after 1918. Although the Supreme Court stated that:

> East Bay does not meet the Semicircle test on a closing line between its seawardmost headlands—the tip of the jetty at Southwest Pass and the southern end of South Pass,

it did expressly hold:

> There is a line which can be drawn within

charts until 1956, La. Exh. 23A, Findings 1.C, 2.L, 21 & 22 in the period 1951 to 1956, the United States was recognizing a width standard which when applied to East Bay, called for its classification as inland waters, for the closing line distance was barely 11 miles wide between natural entrance points on the August 22, 1955 chart, and was not significantly greater on any prior charts.

[7]A greater limit—a twenty-mile rule—was used by federal treasury and law enforcement officials, presumably for many years before and after a 1929 letter reflecting it. See finding 2.C. Of course, East Bay has never had a mouth even approaching twenty miles in width.

East Bay, however, so as to satisfy the semicircle test. *United States v. Louisiana*, 394 U.S. 11, 53, 54.

The Supreme Court was right. The Court will need the Master's findings concerning data on the juridical status of East Bay during the entire period June 5, 1950 to the present to govern disposition of revenue from bonuses, rentals and royalty paid over the years. A ruling that the status from June 5, 1950 to 1956 is irrelevant would contradict the agreement of the parties on the need to decide the status of waters in East Bay since June 5, 1950 (Joint Pretrial Statement, Issues 6(3), p. 5). This is a matter of great materiality since many of the mineral leases were granted prior to 1956.

The factual findings requested by Louisiana on measurement data have been absolutely uncontested and inevitable conclusions are compelled by the data. See Findings 1, 2, 21, 22, and 26 with supporting references which cannot leave any doubt and are clearly compelled by the record: East Bay behind the closing line between its *natural* entrance points was always unquestionably an inland water body with a configuration that was recognized as a bay under international law, certainly at least between June 5, 1950 and 1956; and further, it was a bay by the principles the Supreme Court retroactively applied in the 1965 *California* decision and even a bay under principles retroactively recognized in foreign relations by the United States after December 1951. This is also true as to important

dates: in 1948, when for suspect reasons,[8] federal oil litigation claims over East Bay were first asserted for domestic purposes; in June 1950, the date for commencing accounting between the parties; as of the 1953 enactment of the Submerged Lands Act; and until 1956 when Chart 1272 was changed contemporaneously with the 1956 government motion for a governmental injunction to prevent drilling in East Bay and other offshore areas, which change should also be suspect.

Recognition of East Bay's long standing status as a juridical bay is also material and adds importance to Louisiana's claim to that waterbody as an historic bay. Under the principle urged by the United States at the Hague Conference in 1930 and recognized as the United States position in the U. N. Conference on the Law of the Sea which led to the 1958 Convention, and also recognized in testimony by international law experts in this case,

> Waters, whether called bays, sound, straits, or by some other name, which have been under the jurisdiction of the coastal state as part of its interior waters are deemed to continue as part thereof. (Statement of Mr. Miller, the representative of the United States of America, at the Hague Conference on the Codification of International Law in 1930 quoted as a part of the United States position under the approving heading, "Scope of the Theory of Historic Bays," in the Preparatory

[8]See Judge von der Heydt's findings in the Cook Inlet Case treated in findings 7.C-D, and in note 9 *infra*.

Documents, Vol. I, Official Records U. N. Conference on the Law of the Sea 1958, U. N. Doc. A Conf. 13/37, at page 37.)

But if you might have started even with a geographic bay but in fact as a result of change it ceased to be one but you continued to assert rights in those bays, and other people continued to recognize them, then you might have moved from, if you will, a geographic to an historic bay. Dr. Henkin, Tr. 4912-13.

See testimony of Dr. Bouchez, Tr. 957-66.

We have shown elsewhere that the Supreme Court has deemed the indentations of the Mississippi Delta to have sufficient geographic characteristics to be considered as historic *bays*. See footnote 100, 394 U.S. 11, 75. We have more than demonstrated the correctness of the Court's approach by proving that by every standard, East Bay was geographically and legally a bay until at least 1956 behind a line connecting its outer natural entrance points.

Even after East Bay exceeded the ten-mile proposed limit commencing in 1918, if it had not been juridically an inland water body at its outer mouth, it was at least a geographical bay until 1956 behind its outer natural entrance points. The line met the semicircle test and a fallback line would have been appropriate, even under the *North Atlantic Coast Fisheries Arbitration* recommendation and the policy of the United States. See Findings 1 and 2, especially 2.L(3), 2.N, and Figure 3.

The nexus between the historic and geographic considerations simply cannot be ignored if the Supreme Court's views are to be followed. "Whether particular waters are inland has depended on historical as well as geographical factors." 394 U.S. 11, 23 (in the context of discussing the historic waters claims of Louisiana under the broad Coast Guard Line claim).

The principle announced that waterbodies once inland remain inland, accords with the Supreme Court opinion, for it is derived from historical geographical reasoning. Nor does the principle conflict with the ambulatory commentary of the Supreme Court, if mechanistic literalism is avoided and context considered. That ruling was *not* in the context of Mr. Miller's point that waterbodies, whether straits, sounds or bays, remain subject to the jurisdiction of a state once they fall under the jurisdiction of a state. Surely the Supreme Court has recognized that no amount of geographic change of the shoreline in an historic bay will change its legal status, since *continued* legal status is not *dependent* on *precise* present geography. ". . . other areas of water closely connected to the shore, although they do not meet any precise geographical test, may have achieved the status of inland waters by the manner in which they have been treated. . ." 394 U.S. 11, 23. *A fortiori*, if waters *had* formerly met precise geographical tests and had *also* been treated as a bay, failure to *continue* to meet precise geographic tests would be immaterial. Thus, the doctrine is traceable to the Court's language. Mr. Miller at the Hague was not speaking of mere changes of shoreline and related

three-mile projections from the shoreline; Mr. Miller was speaking of geographic entities *not* changing status.

The question after 1948, when the United States made its oil claims for East Bay as against the State of Louisiana, is not whether thereafter *the federal government* continued to recognize the bay, for as the Supreme Court has stated,

> it would be impermissible to allow the United States to prevent recognition of an historic title which may have already ripened because of past events but which is called into question for the first time in a domestic lawsuit. The latter we believe would approach an impermissible contraction of territory against which we cautioned in United States v. California. U.S. v. Louisiana, 394 U.S. 11, 78 n. 104.

For this obvious reason the Court in Alaska considered "suspect" post-oil litigation matters.[9] The only ques-

[9]United States District Judge James S. von der Heydt, in his findings of fact and conclusions of law dated the 29th day of January, 1973, in the suit of United States of America v. State of Alaska, Civil No. A-45-67, found:

"103. The so-called disclaimers relied upon by the United States government are ineffectual because (a) they are refuted by historic evidence, referred to above, which is clear beyond doubt; (b) they were hastily prepared, based on questionable research, and offered in a self-serving effort by the federal government to have the Court disregard historic facts; and (c) came at a time when historic title had already ripened into ownership of the disputed area of Cook Inlet.

104. The background investigation pertaining to the letter from Abram Chayes to Frank J. Barry dated May 3, 1962 was done by a staff assistant in the Office of the Secretary of State's Legal Advisor. The investigation was limited to records of the State Department. (Exhibit 58; Chayes' depos. pp. 5-12; Yingling's depos. pp. 5-12; 15-16; 18-21)

105. The background investigation pertaining to said letter was inadequate in that: (a) not all of the records of the State Department or other departments necessary to form an adequate basis for the conclusions contained in said letter were searched; (b) an adequate investigation would have required research by one person of at least three months, whereas in fact, the one person assigned to the project took only six days. (Simon's depos., p. 54-55; Exhibit HT; HT-1; Alaska's 11th Set of Interrogatories No. 4)

106. The conclusions contained in the letter from Leonard Meeker to Shiro Kashiwa, dated July 3, 1969, were based on on research other than that referred to above, plus an insignificant amount of additional research. (Carter's depos., pp. 6-11)

107. The charts depicted by Exhibit 73 were drafted by the Law of the Sea Baseline Committee at a time when this case was pending in this court. Among the members of that committee at the time was the principal attorney for the United States in this litigation. Said exhibit cannot be said to be an unbiased product. (Hodgson's depos., pp. 10-15; Exhibits HY, HX, IB, IC, IC-1)

108. The background factual research pertaining to Exhibit 73 was based upon no information other than that referred to in Findings 104-106. (Hodgson's depos., pp. 6-7; 44-45; 48-49)

109. Contrary to the position now advanced by the United States in lower Cook Inlet, the Baseline Committee determined Long Island Sound to be historic waters of the United States in the absence of a declaration by the Executive Branch to that effect. The Baseline Committee failed to discuss, in its deliberations, the possible historic status of Cook Inlet and it is clear such committee did not have before it the evidence which has been presented to this Court. (Hodgson's depos., pp. 49, 151-153; 157-159; Exhibit HX)."

tion after 1948 is, did any *foreign nation* protest or otherwise cease to recognize abundant assertions of

jurisdiction theretofore made by both the United States and Louisiana and thereafter continuously and vigorously asserted by Louisiana? Even a foreign protest would be irrelevant if the title had ripened.

Almost contemporaneously with the filing of the lawsuit against Louisiana in 1948, even in 1946, official publications of the federal government were still representing to the world that East Bay measurements showed it to be inland waters, and the measurements are still officially used.[10]

There is an overwhelming preponderence of evidence showing the possession of East Bay as a body of inland water, which should be the subject of findings; *e.g.*, see Finding 5 treating facts such as the following: oyster leasing in 1903 and for many decades thereafter; patrolling by armed vessels which excluded foreign vessels from East Bay immediately after World War I, and during the 1920's; reinforced further by mineral leasing of the entirety of East Bay in 1928 with a great multiplicity of operations or contracts made during the 1930's and 1940's pertaining to East Bay; the subjecting of foreigners to the regulatory jurisdiction of Louisiana, through licensing Japanese fishermen and enforced compliance with Louisiana conservation laws; the exclusion of unlicensed out-of-state and foreign fishermen by Louisiana patrol vessels as far as the memory of witnesses extended (to 1918); the actual arrest of several foreign vessels in 1946 or

[10] *Measurement of Geographic Area of the United States*, Plate VIII, La. Exh. 52 (1 § 2). See Findings G.I—O.

1947; the continued and renewed mineral leasing in the 1940's and 1950's by the State of Louisiana; and many other acts, state and federal.

By comparison, the *Alaska Cook Inlet* decision simply does not reflect a fraction of the facts supporting the historic bay claim for East Bay. The tentative subjective conclusion of the Master to the contrary simply will not stand close comparison of the factual details of the cases. For the Supreme Court's review, Louisiana is entitled to have reflected particular findings which would enable the Supreme Court to reach its own subjective comparative conclusions without need for remand. There were fishery statutes and regulations in Alaska affecting Cook Inlet. These were also present in East Bay. There was patrolling of Cook Inlet for a brief time. There was patrolling by armed vessels using a point-to-point headland system for measuring the three miles at East Bay at least since 1918. See depositions (La. Exhs. 145-149) which, since they were deposition evidence, could have been overlooked. There was a single, isolated arrest of a Japanese vessel in Shelikof Strait, many miles away from Cook Inlet in another waterbody Alaska claims on historic grounds. True, the arrest was partly on the claimed grounds that the vessel had earlier been in Cook Inlet, but this is not nearly as strong as East Bay evidence. There was not an arrest of a single vessel, but an arrest of a group of vessels within East Bay and at a point more than three miles from shore. In both East Bay and outside of Cook Inlet the arrests were by state enforcement officials concerned with fisheries conser-

vation law enforcement. In Alaska, Canadians had frequently entered the bay. This was done without any special license from the state of Alaska. Such innocent passage did not preclude historic inland bay classification. The only foreign entrances into East Bay other than perhaps emergency entrances in bad weather (which is not regarded as innocent passage) were under fishing licenses or registry obtained from the State of Louisiana which some Japanese who used to operate out of Barataria Bay and Grand Isle acquired to shrimp in inland waters during the 1930's. This was at least an implicit recognition of jurisdiction of the State of Louisiana and in compliance with the laws and authority of the state. Otherwise, foreigners were excluded by armed vessels, using a point-to-point system (the jetties and mudlumps).

There had not been 20 years of mineral leasing and mineral development activity in Cook Inlet prior to the first federal challenge to its status. The 1940 remeasurement for the geographic area of the United States reported in the official United States Department of Commerce publication in 1946, *Measurement of Geographic Area*, did not reflect any internal waters claim for Cook Inlet (Alaskan waters were not treated.) It did for East Bay, and plainly stated to be by application of the rules of the Geographer of the Department of State used to determine inland waters in international relations. There was no evidence in the Cook Inlet case that other resources of the bay had been the subject of exclusive leasing and scores of years of occupation and corporeal uses, *e.g.*, the oyster

and mineral leases in East Bay. There were no bird reservations affecting Cook Inlet. If Louisiana can have the specific particular fact findings to reflect the facts of what was present over the years by way of assertions of jurisdiction of the State of Louisiana and/or the federal government in East Bay, we are confident that the Supreme Court, when it considers both cases, will do equal justice to Louisiana.

The Master's tentative draft suggests that assertions of jurisdiction, which may be made in territorial waters, are not probative of historic inland classification. This has been apparently based upon a misunderstanding of a certain facet of the Supreme Court opinion in the *Louisiana Boundary Decision* relating to rejection of the historic *waters* claim which used only the inland water lines designated under the Act of 1895. The importance of statements of the Court on this subject lies not in any erroneous implication that jurisdictional acts which may be done both in territorial and in inland waters are not probative of an historic inland *bay* claim; for no such legal rule was presented in the portion of the Court's opinion setting forth the relevant historic waters rules. The only agreed rules for historic bay determination given by the Court, for which it found substantial accord, were referred to in notes 102 and 107. See 394 U.S. 11, 23, n. 27; cross referenced at 75, note 102.

> These factors are: (1) The exercise of authority. . . (2) the continuity of this exercise. . . (3) the attitude of foreign states.

It is true, the Supreme Court indicated other considerations in notes 28 and 30, by way of obiter, in the context of dealing with Louisiana's historic *waters* claims stating with reference thereto "there is not complete accord." 394 U.S. 11, 24. We emphasize the word *waters* to show that the relevancy of the Court's remarks in notes 28 and 30, about matters for which there was a want of accord, was further lessened by the context. The context was not a discussion of historic *bay* claims, but of the broad historic *waters* claim based upon the old Inland Water Line position or Coast Guard Line argument that involved a line drawn dozens of miles at sea which was predominantly an historic *waters* contention, not a bay contention. Notes 28 and 30, 394 U.S. 11, 24, 30 both quoted *Juridical Regime of Historic Waters, Including Historic Bays*, U.N. Doc. A/CN.4/143 (1962). Note 28 reads:

> Historic title can be obtained over territorial as well as inland waters, depending on the kind of jurisdiction exercised over the area. "If the claimant State exercised sovereignty as over internal waters, the area claimed would be internal waters, and if the sovereignty exercised was sovereignty as over the territorial sea, the area would be territorial sea." Juridical Regime of Historic Waters, Including Historic Bays, *supra*, n. 27, at 23.

Note 30 reads:

> The recent United Nations study of the concept of historic waters concluded that "if the claimant State allowed the innocent passage of foreign ships through the waters claimed, it could not acquire an historic title to these waters as internal waters, only as territorial sea." Juridical Regime of Historic Waters, Including Historic Bays, *supra*, n. 27, at 23. Under that test, since the United States has not claimed the right to exclude foreign vessels from within the "Inland Water Line," that line could at most enclose historic territorial waters.

The material referred to as being at page 23 is found in the typed copy of the Juridical Regime document at page 66, U.S. Exh. 99, paragraph 164. Paragraph 163 had stated the general proposition that as to historic bays, the coast of which belong to a single state, the waters were internal waters and that the territorial waters commence outside that line.

> The dominant opinion as gathered from the statements assembled in the memorandum seems to be that historic bays, the coast of which belong to a single state, are internal waters.

Paragraph 165 at page 67 of the document, *Juridical Regime of Historic Waters, Including Historic Bays*, U.S. Exh. 99, made plain that the principles quoted in notes 28 and 30 of the Supreme Court's opinion, page 66 of U.S. Exh. 99, are reconciled with paragraph 165's statement by pointing out *that the territorial waters classification can only appertain* to *waters* and not to *bays*.

> In the latter case [referring to historic waters that are part of the territorial sea rather

than inland in character] it would be preferable not to speak of an "historic bay" but of "historic waters" of some other kind.

Thus, when an indentation sufficient to be deemed a *bay* is the situs of the act, the act *coupled with the geography* shows the inland nature of the sovereignty asserted. It has been decided that the waters claimed by Louisiana in the Mississippi Delta on historic waters grounds, and this is especially true of East Bay, have a configuration sufficient to characterize them as historic bays.

> We do not pass on this contention except to note that, by the terms of the Convention, historic bays need not conform to the normal geographic tests and therefore need not be true bays. How unlike a true bay a body of water can be and still qualify as a historic bay we need not decide, for all of the areas of the Mississippi River Delta which Louisiana claims to be historic inland waters are indentations sufficiently resembling bays that they would clearly *qualify under Article 7 (6) if historic title can be proved. Louisiana Boundary Case*, 394 U.S. 11, 75, n. 100.

Thus, the Master is not empowered to consider whether the bodies claimed by Louisiana are merely historic *waters* and not historic bays, and notes 28 and 30 appertain, as the text of the opinion shows, only to those historic waters which are *not* bays. This argument is further supported by the clear letter of the text of the opinion. The Supreme Court, in treating Mississippi River Delta and East Bay claims, treated

them as historic bays and at 394 U.S. 11, 74, 75, used the term *bays* repeatedly in treating Louisiana's Mississippi Delta historic claims. However, by contrast, when discussing the so-called Coast Guard Line claims —a line 370 miles long which at most places did not enclose indentations or was not tied into headlands—the Court repeatedly used the term "historic *waters*." This related only to the rejection of historic claims based only on that line.

> Whether particular waters are inland has depended on historical as well as geographical factors. Certain shoreline configurations have been deemed to confine bodies of waters, such as bays, *which are necessarily inland.*[11] But it has also been recognized that *other areas* of water closely connected to the shore, although they do not meet any precise geographical test, may have achieved the status of inland waters. . . (emphasis added) 394 U.S. 11, 23.

It was not the historic bays, "which are necessarily inland," but the "other areas" of the Inland Water Line claim which were rejected as merely territorial by the Court. By contrast to the *bay* language used as to the Mississippi Delta claims, the term "historic in-

[11]Consider this statement in light of note 100 of the Court's opinion quoted *supra* concerning the sufficiency of the indentations to be bays in the Mississippi Delta, together with the Juridical Regime Document, the Court quoted, which stated immediately after the quoted paragraph as discussed *supra*, that it would be incorrect to speak of historic *bays* but rather the term historic waters should be used if the waters are merely territorial sea rather than inland waters.

land waters" was repeatedly used for the "other areas" of the historic waters claims. Pages 24, 25, 26, 27, 28, 29. The terms *waters* and *bay* were employed quite advisedly according to their context in the text of the Court's discussion.

Somehow the federal arguments have perverted the meaning of what was done in the document "Juridical Regime," changing a rule that permitting innocent passage shows a merely territorial intent into a false rule that only acts actually expelling foreigners physically are probative of an inland intent. The sole example quoted as evidence of the proposition that an assertion of jurisdiction would result in territorial sea classification, was the circumstances where such assertions were accompanied by the permission of innocent passage. (As in the Cook Inlet case, where even these facts did not deter an historic *bay* finding.) There is no occasion for innocent passage within an indentation of a bay-like geographic character, for innocent passage relates to routes which connect parts of the high seas, not entrances to inland waters nor inland waters themselves. Where innocent passage is practiced, navigational regulation alone is of course ambiguous and in the context of the inland water claim, was rejected by the Court as alone inadequate. For the particular concrete problem the court was discussing, one can readily understand how the court probably opined that a vessel 20 or more miles from shore, or clearly in the open seas where there was no trace of an indentation on charts, would not have a sense of being subjected to the inland jurisdiction of

a nation seeking to enforce navigational rules in shallow coastal waters.

To make an analogy to possession and prescription rules of the Civil Law, from which International Law on Historic Waters was derived, possession must be open and unequivocally as owner; that is, there must be acts suggestive of an intent to act as full owner. Navigational regulation *alone* under the circumstances described by the Court can well be understood as insufficient. However, exclusive acts have plainly evidenced a domestic imperium and dominium in East Bay: oyster leasing that started in 1903 and continued for scores of years, and mineral leasing that started in 1928, and the patrolling by armed vessels, and the arrest of foreigners in 1946; and the enactment of laws claiming the waters—these and other acts all are so overwhelmingly exclusive that there should be no doubt as to their efficacy for historic bay purposes, especially in an indentation which would give the plain geographic connotation of an inland bay claim.

> Whether particular waters are inland has depended on historical as well as geographical factors . . . configurations such as bays . . . *are necessarily inland*. 394 U.S. 11, 23.

The true impact of note 30 of the United States Supreme Court opinion, 394 U.S. 11, 26, pertaining to the effect of the allowance of innocent passage is that it is incumbent upon the party contesting the assertions of jurisdiction to show that innocent passage was normally or frequently allowed, that is, that the waters

which are the subject of the historic claim were an international route for traffic between parts of the high seas. Not only did the government fail to show such a thing, but the character of East Bay precludes such a showing. No vessel would go into East Bay for the purpose of getting to another part of the high seas but would only use it, navigationally, to enter or exit inland waters. The same is true of Caillou Bay and other waters claimed on historic bay grounds, none of which are useful for innocent passage to connect parts of the high seas. Shallowness or configuration makes international passage between parts of the high seas impossible. The real significance of the innocent passage quotation from the Juridical Regime document is this: jurisdictional acts which have been rejected as ineffective to prove an *inland* historic title were in the context of significant innocent passage, or the subject of an express limiting declaration. *United States v. State of California*, 381 U.S. 139, 171-173, discussion of the fact that the Santa Barbara channel served as an important route of international passage which precluded it from being classed as inland water; discussion of Coast Guard Line in *United States v. Louisiana*, 394 U.S. 11, 27 (1969); and U.S. Exh. 99, p. 66.

If the Master adheres to his tentative ruling that Louisiana's evidence has a merely territorial significance, that ruling will be inconsistent with many authorities which, on the basis of lesser evidence than the undisputed evidence presented by Louisiana, have recognized historic bays to enclose inland waters.

Thus, the authorities recognize that there was no

question that when Delaware Bay and Chesapeake Bay were adjudicated to be historic bays, their waters became inland waters of the United States. (Op. A.G. 32 (1852)). (*Stetson v. U. S.*, No. 3993 Class 1) (2d Court of Commissioners of Alabama Claims). This is likewise true of Long Island Sound. At first Long Island was not recognized by the United States State Department as a historic bay, but this was corrected by Mr. Leonard C. Meeker, Legal Advisor for the State Department, in his letter to Mr. Erwin N. Griswold, Solicitor General, dated April 8, 1969. When Long Island Sound was recognized as a historic bay, no question was raised about its waters being inland waters of the United States. See U. S. Exh. 108.

The Convention on the Territorial Sea and the Contiguous Zone itself refutes the United States' contention that East Bay and Caillou Bay are territorial seas but not inland waters. The rules of Article 7, it will be noted, are prescribed solely for the purpose of defining the baseline for the measurement of territorial sea across the mouths of or within bays, and that waters inside that line are inland waters. Accordingly, the only sensible meaning of Section 6 of that Article (the exception of historic bays) is that a baseline drawn across the bay's entrance encloses inland water.[12]

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[12]Paragraph 116, Historic Bays, indicates that a bay can contain historic waters only if the recognized historic bay were equal to the width of the historic water in the bay. Thus, since one-half of the distance between the headlands of East Bay and Caillou Bay is more than three miles in each case,

Thus in the document, Historic Bays, Memorandum of the Secretariat of the United Nations, Document A/Conf 131, one of the United States' own exhibits in the case (Exh. 97), we find:

> "It is always necessary to remember, in dealing with 'historic waters,' the essential point that those waters are internal waters. This fact explains many aspects which would be otherwise difficult to grasp. The theory was originally evolved to apply to 'bays,' and is still referred to as the theory of 'historic bays,' because it was never envisaged that it might apply except in areas which, by reason of their configuration, are generally not used as major international routes of transit; . . ." Historic Bays 117. (See also Juridical Regime 163 wherein it is stated that the dominant opinion is that historic bays are internal waters.)

The United States does not dispute authority of a state exercising sovereignty (Juridical Regime, 80) over bays in order to claim them as historic waters. What kind of acts constitute "sovereignty"? The United States contends that the requisite exercise of sovereignty must consist of acts directed against foreigners. The only evidence in the record on this subject is that introduced by Louisiana, which establishes that Louisiana's enforcement policies in East Bay and Caillou Bay were directed both against nationals and foreign-

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it necessarily follows that the territorial sea of the United States must have been more than three miles. This, of course, is not true since the United States was only claiming a territorial sea of three miles.

ers alike. The United States did not offer one scintilla of evidence to establish that foreigners used East Bay or Caillou Bay without complying with the laws, rules and regulations promulgated by Louisiana for fishing in these waters. Certainly if there was such evidence the United States, with its vast resources would have produced it.

Recognizing that sovereignty must be effectively exercized by deeds and not merely by proclamations, the writers of the Juridical Regime stated:

> "This does not, however, imply that the State necessarily must have undertaken concrete action to enforce its relevant laws and regulations within or with respect to the area claimed. It is not impossible that these laws and regulations were respected without the State having to resort to particular acts of enforcement. It is, however, essential that, to the extent that action on the part of the State and its organs was necessary to maintain authority over the area, such action was undertaken." Juridical Regime 99.

The absence of foreign vessels (except a few who recognized Louisiana's sovereignty by the purchase of licenses from Louisiana) and Louisiana's policy of enforcing its laws and rules in the waters of East Bay and Caillou Bay against nationals and foreigners alike satisfy this pronouncement. In discussing the kind of authoritative acts the State must exercise, the author of the Juridical Regime document stated:

> "Suppose . . . that the State has continuously as-

serted that its citizens had the exclusive right to fish in the area, and had, in accordance with this assertion, kept foreign fishermen away from the area or taken action against them. In that case the State in fact exercised sovereignty over the area, and its claim, on a historical basis, that it had the right to continue to do so would be a claim to the area as its 'historic waters'. The authority exercised by the State would be commensurate to the claim and would form a valid basis for the claim (without requirements for the title must also be fulfilled)." Juridical Regime 86.[13]

The author went on to quote the opinions of prominent and internationally recognized writers on the subject and to refer to international conventions and arbitrations. One writer, Gidel, in discussing the acts by which authority is exercised, stated:

> "It is hard to specify categorically what kind of acts of appropriation constitute sufficient evidence: the exclusion from these areas of foreign vessels or their subjection to rules imposed by the coastal State which exceed the normal scope of regulations made in the interests of navigation would obviously be acts affording convincing evidence of the State's intent. It would, however, be too strict to insist that only such acts constitute evidence. In the Grisbadarna dispute between Sweden and Norway, the judgment of 23 October, 1909 mentions that 'Sweden has performed various acts. . . owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty.' " Juridical Regime 89.

Bourquin, another writer, agreed and stated:

> "What acts under municipal law can be cited as expressing its desire to act as the sovereign? That is a matter very difficult, if not impossible, to determine *a priori*. There are some acts which are manifestly not open to any misunderstanding in this regard. The State which forbids foreign ships to penetrate the bay or to fish therein indisputably demonstrates by such action its desire to act as the sovereign." Juridical Regime 90.

In the *Fisheries* case, *United Kingdom v. Norway*, Judgment of 18 December, 1951, Norway stated in its Counter-Memorial:

> "It cannot seriously be questioned that, in the application of the theory of historic waters, acts under minicipal [sic] law on the part of the coastal State are of the essence. Such acts are implicit in an historic title. It is the exercise of sovereignty that lies at the basis of the title. It is the peaceful and continuous exercise thereof over a prolonged period that assumes an international significance and becomes one of the elements of the international juridical order.' Juridical Regime 93.

[13]See Deposition of Captain Schouest on the armed patrols commencing in 1919, and how the Japanese and other foreigners honored them. Finding 5.P. See also depositions of other law enforcement officers. Findings under 5.

Clearly Louisiana's evidence meets the test set forth in the above-quoted portion of the Juridical Regime, an authority admitted by the United States to be controlling in this case. The United States Supreme Court has decided that state acts may be considered in establishing jurisdiction over inland waters.

Another misunderstanding in the Master's draft concerning the Supreme Court's 1969 opinion warrants correction. The Court, 394 U.S. 11, 27, quoted administrative acts commencing in 1948 and in 1953, 1964, and 1967 (each happening at or immediately before an active phase of the controversy) disclaiming importance for the 1953 Coast Guard Line. Disclaimers in or after 1948 are suspect. The 1943 Coast Guard Manual did not clearly disclaim jurisdictional importance but merely stated that the line quite obviously did not truly separate the high seas from the inland waters. Obviously, it could not, because territorial waters intervened. But if the latter point were not true, still between 1895 and during all the many subsequent declarations of lines around the Mississippi Delta prior to 1953, jurisdiction, at least navigational, was declared and exercised under the Act of 1895. Alone, perhaps this might not be enough. However, given the many acts and lines depicted in La. Exh. 285, the cumulative effect is enough. In effect, before Article 4 was articulated, the United States itself drew or recognized straight baselines, thus, adding to the historic bay body of evidence. There had, "in effect" been a drawing of an international baseline by subsequently

defined principles and methods. That is enough. See 394 U.S. 11, 74.

CAILLOU BAY

If Caillou Bay had been long treated as inland waters, it would be historic inland waters if not an historic bay. The Court said:

> ". . . other areas of water closely connected to the shore, although they do not meet any precise geographical test, may have achieved the status of inland waters by the manner in which they have been *treated by the coastal nation*. . . .
>
> [H]istoric title can be claimed only when the 'coastal nation has *traditionally asserted and maintained dominion* with the acquiescence of foreign nations.' " 394 U. S. 11, 23.
>
> "It would be [impermissible] to allow the United States to prevent recognition of a historic title which may already have ripened because of past events but which is called into question for the first time in a domestic lawsuit. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in *United States v. California*. See n. 97, *supra*." 394 U. S. 11, 77 n. 104.

Moreover the United States has in effect utilized straight baselines around Caillou Bay and would change now in an impermissible effort to prevail in this litigation.

"If that [that the United States had taken

> a posture of a firm and continuing international policy to enclose inland waters within island fringes to the extent that it could be said to have in effect utilized the straight baseline approach] had been the consistent official international stance of the Government, it arguably could not abandon that stance solely to gain advantage in a lawsuit to the detriment of Louisiana." 394 U.S. 11, 74 n. 97.

The Special Master should first determine when the United States called into question Louisiana's inland water claim to Caillou Bay in a domestic lawsuit. Caillou Bay has been treated by Louisiana as a bay since its admission into the Union in 1812. Caillou Bay has been designated as a bay on maps since that date. When Act 52 of 1904 and similar prior acts were passed, by which Louisiana claimed title to the beds and bottoms of all bays on the Gulf, Caillou Bay was such a bay and title was vested in the State of Louisiana. After the decree of December 11, 1950, by which the United States Supreme Court determined that Louisiana had no marginal sea, the Honorable Philip B. Perlman, on March 16, 1951, made demand on Louisiana to account for offshore oil and gas operations gulfward from a line on Charts 1115 and 116. Caillou Bay was treated on the charts as inland waters. This is the same set of maps on which the United States disputed Louisiana's claim to East Bay. When the Submerged Lands Act was passed in 1953, Caillou Bay was inland waters of Louisiana and was so recognized by the United States.

This was true throughout the litigation interpreting initially Louisiana's claim under the Submerged Lands Act, which resulted in the decree of the Supreme Court, dated May 31, 1960,[14] determining that Louisiana had no historical boundary and was only entitled to three miles from its coastline. The arguments leading to that decree had recognized the inland character of Caillou Bay and all other waters enclosed by islands.

In 1961, even after the 1958 Territorial Sea Convention, the United States was still adhering to the Chapman Line position on Caillou Bay, on the basis of State Department direction. See La. Exh. 178, and Finding 14.T.

In the *California* litigation, no indication was given of any change in the United States position on the island-bay closing lines and the recognition of the sufficiency of enclosure, but rather the Louisiana facts of sufficiency of enclosure were merely distinguished from Santa Barbara Channel. (After 1968 the Santa Barbard Channel holding has been urged as dispositive of Caillou Bay issues.) For the first time in 1968 the Proposed Supplemental Decree No. 2 and Memorandum in Support of the Motion for the United States and in Opposition to the Motion of the State of Louisiana called Louisiana's title to Caillou Bay in question in the following language.

> "Under the Convention on the Territorial Sea and the Contiguous Zone, waters between the mainland and coastal islands do not have the status of

[14] United States v. State of Louisiana, 363 U.S. 1.

inland waters unless the coastal nation elects to enclose them by straight baselines under Article 4. *Prior to that Convention there was no international consensus on the subject; but the United States had taken the position that such waters were inland waters at least in some circumstances.* In accordance with that position, we have heretofore treated Chandeleur and Breton Sounds as inland waters in this case and its predecessor, United States v. Louisiana, No. 13, Original, October Term, 1948; No. 12, Original, October Terms, 1949-1950; No. 7, Original, October Terms, 1951-1960." (Page 78). (Emphasis added)

The United States continued on page 79 to state:

"On the same basis we conceded in 1948 that the waters *between the mainland and islands belonging to Louisiana under its Act of Admission were in fact sufficiently enclosed to constitute inland waters under the principles then being followed by the United States.*" (Emphasis added.)

The United States went on to say:

"We think that there would be much justification for asking at this time to be relieved of a concession, at variance with the Convention on the Territorial Sea and the Contiguous Zone, made four months before that Convention was signed by the United States, more than six years before it entered into force, and seven years before this Court announced that the grant made by the Submerged Lands Act of May 22, 1953, was to be measured by the rules of the Convention *rather than by the principles followed by the United States at the time the Act was passed.*" *Id.* at 79-80.[15]

It was no concession, as argued by the United States. It was a statement of a firm policy by the United States. To understand why it was not a concession, it is necessary to consider correspondence that has been received from the United States bearing on this subject. In the letter dated February 29, 1960, from Honorable J. Lee Rankin, Solicitor General of the United States, to Rear Admirable H. Arnold Karo, Director, Coast and Geodetic Survey, Department of Commerce, Washington 25, D.C., with a copy to Raymond T. Yingling, Assistant Legal Adviser, Department of State, and to Dr. G. Etzel Pearcy, Geographer, Department of State, Mr. Rankin stated:

"On July 6, 1950, in response to a specific inquiry in connection with the case of United States v. Louisiana, 339 U.S. 699, the State Department advised us that Chandeleur Sound should be considered inland water. On *October 26, 1950, in the same connection, Dr. Boggs, then Geographer of the State Department, joined with representatives*

[15]It will be seen from the above the United States, in dealing with foreign countries, recognized water enclosed by a string of islands as inland waters and it was only after the ratification of the Convention on the Territorial Sea and the Contiguous Zone that the United States changed its position. The Convention on the Territorial Sea and the Contiguous Zone was ratified on March 24, 1961, by the United States as T. I. A. S. No. 5634 and on September 10, 1964, when the requisite number of nations had ratified it the Convention went into force.

of the Department of the Interior and this Department in describing, on that basis, a line, (commonly referred to as the 'Chapman Line') to represent the official position of the United States as to the coast line of Louisiana, that is, the base line for the three-mile belt. We followed this position in our brief in support of our motion for judgment on the amended complaint in the related case of United States v. Louisiana, et al, No. 11, Original, October Term, 1957, at page 177; a draft of that brief was submitted to the State Department in May, 1958, before it was filed, and no question was raised on this point. The position was repeated at pages 43-44 of our reply brief in the same case, a draft of which was likewise submitted to the State Department in August 1958. At that time, Mr. Yingling, Assistant Legal Adviser, did raise a question regarding Chandeleur Sound; but at a conference between him, Dr. Pearcy, and John F. Davis and George S. Swarth of this Department, it was agreed that we should continue to concede that the Sound is inland water. Because of this concession, it was unnecessary for Louisiana to press certain aspects of its argument as it might otherwise have wished to do." [16]

The Court, in this case, held:

"It might be argued that the United States' concession reflected its firm and continuing international policy to enclose inland waters within island fringes. It is not contended at this time, however, that the United States has taken that posture in its international relations to such an

[16]Included in La. Exh. 283 (20). (Emphasis added.)

extent that it could be said to have, in effect, utilized the straight baseline approach sanctioned by Article 4 of the Convention. If that had been the consistent official international stance of the Government, it arguably could not abandon that stance solely to gain advantage in a lawsuit to the detriment of Louisiana.[17] Cf. United States v. California, 381 U.S. 139, 168: '(A) contraction of a State's recognized territory imposed by the Federal Government in the name of foreign policy would be highly questionable.' We do not intend to preclude Louisiana from arguing before the Special Master that, until this stage of the lawsuit, the United States had actually drawn its international boundaries in accordance with the principles and methods embodied in Article 4 of the Convention on the Territorial Sea and the Contiguous Zone." 394

It is clear that the United States recognized, prior to the adoption of the Convention on the Territorial Sea and the Contiguous Zone, that Caillou Bay was inland waters under the rules then recognized by the United States in its relation with foreign nations.[18] This is another instance where the United States, after the adoption of the Convention on the Territorial Sea and the Contiguous Zone, is attempting

[17]It is noted that the Supreme Court did not have the above document or other related materials contained in Appendix A and La. Exh. 178 before it at the time of its 1969 opinion.

[18]There is attached hereto Appendix A, a Chronological listing of Documents Relating to the United States and International Law on Islands and Groups of Islands Enclosing Inland Waters.

to deprive Louisiana of title which was validly vested in Louisiana prior to the adoption of such Convention.

If the Special Master fails to recognize Caillou Bay as historic inland waters, it will be necessary for the Special Master to decide whether the United States by its ratification of the Convention on the Territorial Sea and the Contiguous Zone divested Louisiana of title to Caillou Bay which had ripened in Louisiana prior to the United States' adoption of such Convention.

The United States, in its suggested findings of fact and conclusions of law submitted to the Special Master by letter dated December 3, 1973, argues "At all events, regulation of fishing up to 12 miles from shore (which would more than encompass all of East Bay) could as well be viewed as the assertion of a territorial sea of that width." (Page 17 (d)), and then stated: Thus, any acquiescence by foreign fishermen in Louisiana's shrimping and fishing regulations as applied to the most seaward portions of East Bay would prove no more than that they were willing to treat the area as part of the American territorial sea—not inland waters of the United States." Page 17 (f). This not only ignores the recency of the 12 mile fishing zone position of the United States in foreign relations and its former rigid position on the three mile rule, it also implies that the United States recognized that Louisiana did enforce its fishing and shrimping regulations in the total of East Bay against foreigners as well as nationals, but argues that such would not establish the waters of

East Bay as inland waters. This was the same argument made by the United States in the Alaskan case and was rejected both by the lower court and the United States Circuit Court for the Ninth Circuit. In his report, the Special Master seems to accept the argument of the United States that all of the acts performed by Louisiana in East Bay were consistent with the character of those waters as territorial sea, and thus errs.

The United States, in effect, drew straight baselines around Caillou Bay.[19] In our briefs we discussed proof of the firm and continuing policy of the United States in its international relations to treat island fringes as enclosing inland waters. This policy was given specificity by use of a ten-mile standard and even applied in this very litigation for twenty years until the 1968 motion. See Appendix A. We there present the history of this policy: *in esse*, starting in the 1860's with the recognition of Spanish claims in Cuba; thereafter with the recognition of British Bahama claims; in the recognition of Cuban island claims in 1955; in the work of Boggs for the 1930 Hague Conference; the application of Boggs work in the re-measurement of the United States in 1940; the 1946 publication of that standard in the Department of Commerce work *Measurement of Geographic*

[19]This is true also at East Bay and generally in the Mississippi Delta, but is especially pertinent to East Bay; therefore, for convenience in presentation, the treatment of the question is given under Caillou Bay but reference is made to Mississippi Delta straight lines also.

Area of the United States (Louisiana exhibit 52(1)); the drawing of the Chapman line in collaboration with the State Department; in the position publicly recognized and urged in this litigation from 1948 until 1968; in the Coast and Geodetic Survey publication, *Shore and Sea Boundaries;* in the 1951 letter from the Secretary; in the interdepartmental work of 1961; and in other actions treated in Appendix A. These facts and others certainly show a firm and continuing policy to enclose as inland those waters within island fringes. This is all the Court suggested was necessary to arguably show that the United States had in effect drawn straight baselines. However, Louisiana presented much stronger evidence.

We showed the publication of the Chapman line actually enclosed Caillou Bay as inland waters. (There can be no stronger proof than this that the Bay was recognized as inland waters until after the litigation started.) We showed, additionally, that the Bureau of the Census had drawn baselines around Caillou Bay in the 1940 Census measurement of United States territory. Additionally, all affected federal agencies concurred in the closing line for Caillou Bay in 1961. Similarly, there was unchallenged proof that lines were drawn around East Bay and the entire Mississippi Delta by federal agencies, including lines related to bird reservations, game refuges, navigational regulatory lines, and the 1940 *Measurement of Geographical Area* lines (Louisiana exhibit 52(1)). This is but to name a few.

It is a clearly impermissible contraction of territory to now deny inland status of a bay which, even during twenty years of oil litigation claims had been recognized to be a bay since 1812 and which no foreign nation had ever claimed to be high seas. There is clearly then a need for the Master to pass upon the issue of whether the State of Louisiana may be divested of recognized territory in the name of foreign relations. See Appendix A and historic Caillou Bay findings requested in the attached motion.

General and Concluding Comments on Historic Bays

We have recounted here much material relative to East Bay and Caillou Bay both because of its importance and because it is equally applicable in other major areas of the Mississippi Delta claimed on historic bay grounds. Thus, for example, the long history of point-to-point law enforcement including patrols by armed vessels excluding out-of-staters and foreigners in East Bay as per the deposition of Captain Schouest, Captain Von Lubbe and other Louisiana law enforcement commanders of armed vessels, applied as well throughout the whole Mississippi Delta as did the mineral leasing, fisheries regulations, statutory claims and other acts, all of which also affected Caillou Bay and for which repetitive discussion is unnecessary. There are certain powerful statements, though, which appertain to all of the waters claimed on historic bay grounds which this selective discussion of particular problems in the Master's report may not have highlighted.

It is undisputed that prior to the determination

of the United States to litigate with California no government but Louisiana laid claim to the waters now in litigation.

It is undisputed that even after the United States determined to litigate with California, no nation in the entire world has disputed Louisiana's claim to these waters but the United States.

It is undisputed that as part of the federal constitution the states assigned a part of their sovereign rights—dealing with other nations—to the federal government, and the latter is not authorized to use this power to the detriment of the states and the enrichment of the federal treasury.

It is undisputed that the purpose of this domestic litigation is a division of the submerged mineral resources between the state and federal government but that by action to which Louisiana was not a party, the Federal Government seeks to prevail by giving away American territory that no foreign government seeks to get.

It is undisputed that the reference in the Convention on the Territorial Sea and Contiguous Zone made long after the Submerged Lands Act to historic waters would justify the United States in successfully maintaining that character of these waters through the activities of Louisiana against any possible foreign claimant.

It is undisputed that before this litigation between the federal and state governments, the internal

status of these waters as part of the United States and part of the territory of Louisiana was never challenged by any nation. Not until the California case, decided by a divided court in 1947, was there any concept of a federal belt around the seaward states.

It is undisputed that the Constitution of the United States forbids depriving a state of its territory without its consent.

In all issues between a littoral nation and another as to the extent of internal waters, the littoral nation is entitled to protect its economy and safety by choosing the most seaward and not the most inland points to serve in marking its boundary so long as there is geographic or historic support for such point.

In the resolution of this conflict, where reasonable choices exist, that one should be made which best preserves American territory.

If unchallenged oyster leases dating back 70 years are not enough to show waters were recognized as inland waters of the state; if mineral leasing both in Caillou Bay and East Bay and all of the Mississippi Delta bays dating back 20 years before this oil claim was first made is not enough; if official recognition of the status of Caillou Bay as inland waters between 1948 and 1968 in this oil litigation is not enough; if 79 years of navigational control over East Bay is not enough; if straight baselines drawn by the Bureau of the Census around East Bay and other bays of the Mississippi Delta and Caillou Bay are

not enough; if bird reservations encompassing East Bay on maps are not enough; if official designations by the Secretary of the Interior to reflect Department of State policy in this litigation are not enough, as at Caillou Bay with the Chapman Line; if 100-plus years of continuous uninterrupted policy on island fringes for Caillou Bay is not enough; if the arrest of foreigners is not enough if scores of years of armed patrols enforcing fishing regulations is not enough; if a point-to-point system of juridical ascertainment and law enforcement in the Mississippi Delta and at Caillou Bay is not enough; if at least 144 years of satisfaction of precise geographic standards at East Bay is not enough—*if all of this together* is not enough to show a title by historic or straight baseline considerations, then the Master will have decided that the language of the Supreme Court is in fact illusory and meaningless, for he will have held in essence that the historic waters and historic bay rules and straight baseline considerations suggested by the Court were hollow hopes and that only present geographic or geomorphic facts are functionally relevant.

We turn to those geomorphic matters now on a highly selective basis to avoid rebriefing. Here and in our discussion of historic straight baseline matters, omission of positions previously reached is not to be construed as an indication of waiver of these positions but is occasioned by the selective nature of this memorandum. See proposed findings for more fully detailed findings requested of the Master on geomorphic matters under the Convention.

JURIDICAL AND GEOGRAPHIC MATTERS[20]

East Bay Juridical Status

The Master has tentatively decided against the use of tributary waters for area measurement distinguishing the only precedent, the *Thames Estuary* decision, on the ground that East Bay is not an estuary. The rules that were applied in the Thames Estuary were based not per se on its status as an estuary, but on the fact that estuaries are treated as bays. See 1 *Shalowitz* 217. Thus, the Master has presented *a fortiori* reasoning to follow the decision, as grounds for distinguishing it. The case is indistinguishable. It will weaken the report, unless the report follows the case, instead of seeking distinctions.

If the precedent is followed only to the extent of employing those waters which are directly tributary to the bay, the *Thames* decision could not reasonably be used to attack the Master's report in the Supreme Court. If it is not followed, and the present draft employed, the Master's rejection of the use of tributary waters will be subject to attack through a host of arguments, *e.g.*:

1. The draft is inconsistent with the Supreme Court's semicircle test usage of geographically distinct waterbodies within waterbodies, separated only by streams and stream bank islands. 394 U.S. 11, n. 65,

[20]It will assist the Master in examining these arguments to review the findings requested for each area, and to use the syllabus of the requested findings, attached hereto as Appendix B.

see illustration La. Reply Brief, p. 58 and Fig. 58A in re Zinzin Bay and Riverside Bay.

2. In deeming "arbitrary" a system which would terminate tributary water measurement at the point where the tributary nature of the waterbody ceases, the draft errs.

3. Even if the method of terminating measurements of tributaries where they join the Mississippi proper was "equally arbitrary," as cutting them off at their mouths, the decision to cut them off at their mouths would violate a court applied principle calling for selection of the method enclosing the greater extent of waters. See Finding 28.

4. The Master solves the problem of deciding how far up tributaries to go by not going up into them at all, thus making a choice that would tend to defeat the semicircle test in a marginal case. This is error. See Finding 28.

5. Like bays, ponds or coves linked only by narrow passages or channels to an outer indentation, narrow passages or channels are tributary waterways themselves and should be included under the Court approved rule. 394 U.S. 11, 51, n. 66.

> " 'In the application of the semicircular rule to an indentation containing pockets, coves or tributary waterways, the area of the whole indentation (including pockets, coves, etc.) is compared with the area of a semi-circle.' " Quoting 1 *Shalowitz* 219.

6. The Court said follow the Convention; the Convention says follow the low water mark.

The reference to the Master commands that his report be "consistent with this opinion." 394 U.S. 11, 78. As a bare minimum, even partial consistency would require acceptance of Method 2 and use of passages and channels. Complete consistency would also call for use of islands within the bay. Method 3, and use of the deteriorated island remnants of the Joseph Bayou area as water are also required by the opinion.

We respectfully point to the Special Master's error in saying that Louisiana had endeavored to include evidence of the deterioration of the Joseph Bayou area (relative to the semicircle test) only in a brief after the record had been closed. Photography of the Joseph Bayou area was included in a post-argument technical memorandum requested by the Master merely to illustrate that the facts of Joseph Bayou deterioration discussed by witnesses and shown by a mass of photographs in the record were continuing even at present. The Master's report reads as though the only evidence of Joseph Bayou land mass deterioration was evidence after the closing of the record. This is clearly erroneous. See materials treated in findings hereafter requested and especially testimony of Allan Ensminger, the surface photograph panorama introduced with the testimony of Dr. Morgan, La. Exh. 342, and low oblique aerial photography in the record, *e.g.*, La. Exh. 9. These simple, eloquent pictures will cause the Supreme Court to feel as qualified to pass upon this

question as anyone else looking at the photographs. They must have been understandably overlooked in examining the extensive record. We are confident that upon a review of this record material and other record evidence which has been overlooked, the Master will correct his report by changing his conclusions to fit the *record* evidence. Or, if the Master deems the *record* evidence immaterial, then he should deny the request for a finding on that ground to form an appealable basis for Louisiana to seek review as to the materiality of the photographs, and the Morgan-Ensminger testimony.

If the Master now recognizes that the deterioration of Joseph Bayou landforms was shown by record evidence, but adheres to the approach rejecting use of tributary waters, Closing Line B should be recognized. It failed to meet the semicircle test using Method 1 by a mere 820 acres out of 14,714 acres. The Joseph Bayou island remnant areas (so much like the deteriorating fragments of land in West Bay recognized by the Court as water for measurement) obviously affect materially more than 820 acres. See La. Exh. 197 and requested findings.

By Method 2, using tributary waters, the data would justify Line B, even if Joseph Bayou deterioration were not recognized.

By Method 3, Line A even presently satisfies the semicircle test. This conclusion is fortified by inclusion of Joseph Bayou land remnants as islands.

Even using conservative Method 1 and ignoring

evidence of the deterioration of Joseph Bayou, Line A satisfies all relevant tests until 1956. Not until that year did it cease to satisfy the semicircle test. See arguments *supra*, under historic waters, detailing the fact that *by the conservative method approved by the Master*, and by application of the Convention retroactively, as the Court did in the *California* case, Line A enclosed a bay on June 5, 1950 until 1956.

Issue 6(e) requires answer to the question:

> "Have there been changes in the coastline that would affect future distribution of revenues heretofore accrued since June 5, 1950, and, if so, when did the changes become effective?"

Precise answer has not been given to this question. Only by accepting Method 3 and Line A, or by finding that East Bay is an historic bay, can the status of geomorphic alternatives over time be ignored. Serious oversight may otherwise occur, such as the oversight in failing to give effect to Line B'.

The federal government repeatedly admitted Line B' met the semicircle test by the conservative method the Master approved. It plainly satisfies headland and other bay considerations. Yet the draft report ignored it. Federal suggestions to reject it on other grounds simply won't hold water, as our oral discussion shall show.

On Cowhorn Island, the Master is eminently correct, except that he does not carry the finding forward in time as the evidence warrants. Removal from

the December 6, 1969 chart was based on a lawyer's instructions, and contrary to normal hydrographic standards used under unsuspicious circumstances. It quite obviously resulted from a hurried effort to overcome the effect of depositions which had shown there was a survey basis—a hydrographic survey basis—to placement of the island on the chart. This caused the government to realize Louisiana would rely on the chart and so the chart was changed, with no new evidence to justify the change, no evidence beyond that which had previously been considered and rejected at an unsuspicious time. The survey, later made to justify a further revision, was made *immediately after a hurricane*, and was worthless to reflect normal shoreline conditions, as the federal survey party chief admitted.

That survey was also remarkably deficient in other respects, *e.g.*, taking soundings *seaward* of an area to show that the area was below the low water line. See La. Reply Brief, p. 149, Fig. 149A, which shows the quality of that proof. Thus, even if the Master concludes that Cowhorn Island no longer existed after December 6, 1969 because of the 1970 survey, the same cannot be said for the additional low water lines between West Bay and Pass Tante Phine, at the mouth of Pass du Bois. When the Joint Pretrial Statement was filed in Memphis on December *5*, 1969, the alleged December *6* revision of the chart was not yet made. Obviously, Issues 8(a) through (e), indeed all of the issues related to the effect of Chart 1272, are based on the editions extant on or before Decem-

ber 5, 1969. Hurried or post-hurricane changes in the chart thereafter, so obviously timed at a suspicious date, under the admitted direction of counsel, and plainly for purposes of this litigation, should be ignored, not merely because of their unreliable character, but because the Statement of Issues does not appertain to them.

Louisiana expressly objected to introduction of the post-December 5, 1969 revisions of Chart 1272. We accordingly request a finding that the parties agreed in Memphis in a meeting before the Master on December 5, 1969 to issues pertaining to Chart 1272, and this agreement therefore did not reasonably relate to editions revised after December 5, 1969. We further request a finding that post-December 5, 1969 revisions of Chart 1272 be rejected as intrinsically unreliable, due to the suspicious timing of the chart revisions, their plain purpose to affect this litigation, and the absence of reliable survey evidence to show normal shoreline conditions to support the revisions.

Caillou Ba

Islands which have been treated realistically as part of the mainland and as forming the side of Florida Bay in the report of the Florida Master, presents less favorable assimilation data than the facts of the Isle Derniere. It is inconceivable that in the context of no final judgment, the Supreme Court of the United States will allow a passing error in a footnote concerning a misunderstanding of what had been argued to control a Louisiana Special Master's report

and compel ignoral of the geomorphological facts at Caillou Bay that are markedly more favorable to bay classification than those of Florida Bay and the Keys. See requested findings and related illustrations comparing the data. Even if the Master feels bound by the passing footnote remark, to avoid possible remand, the report should reflect factual findings to enable the comparative data to be reviewed by the Supreme Court; or there should be a finding that the requested findings are irrelevant or immaterial under the Court's opinion in order to furnish a basis of review. Of course, Louisiana maintains, as with all of the requested findings it has proposed, that all are material and relevant, but the purpose in submitting them is to perfect the record to enable Louisiana to argue that particular requested findings should have been granted if they in fact have not been granted.

Similarly, the great array of data showing that Isle Derniere segments are to reasonably be considered as part of the mainland ought to be the subject of findings. These and other detailed findings are requested for Caillou Bay.

Other Major Matters

The *Florida* decision and island assimilation problems affect numerous bay headlands along Louisiana's coast. We have therefore prepared findings which are substantially self briefing to augment or correct the Master's report on several island matters.

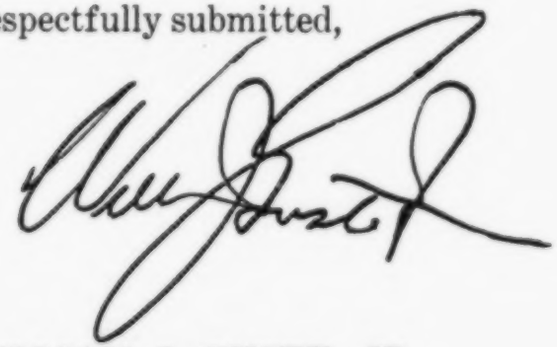
Other miscellaneous details are important also,

but are not amplified in this memorandum although treated in the findings. This is of course for the purpose of brevity and is not to be construed as an indication of the relative importance of the matter.

Certain corrections and reconsideration of Atchafalaya Bay problems are requested in a finding.

The Master's decision at Ascension Bay is correct, but can be reinforced by certain specific additional findings which are requested. Similarly, East Bay geomorphic findings of the Master which were favorable to Louisiana can be reinforced by requested findings.

Respectfully submitted,



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May 13, 1974

APPENDIX A

A Chronological Listing of Documents Relating to United States and International Law on Islands and Groups of Islands Enclosing Inland Waters

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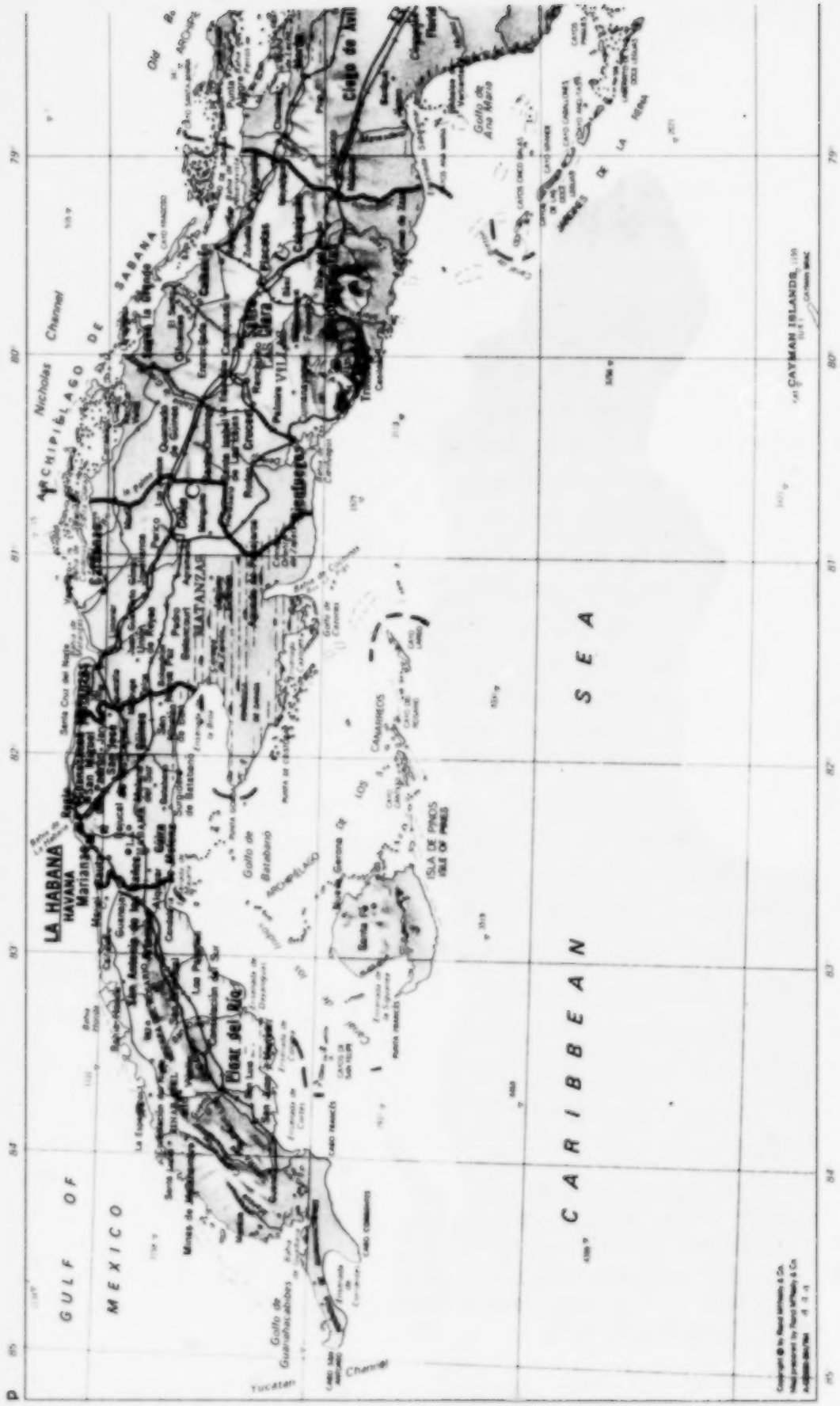
1863: Letter from U.S. Secretary of State Seward to Spanish Minister Gabriel Tassara

The undersigned has further ascertained, as he thinks, that the line of keys which confront other portions of the Cuban coast resemble, in dimensions, constitution and vicinity to the mainland, the keys which lie off the southern Florida coast of the United States. The undersigned assumes that this line of keys is properly to be regarded as the exterior coast line, and that the inland jurisdiction ceases there, while the maritime jurisdiction of Spain begins from the exterior sea front of those keys.

Letter dated August 10, 1863, which appears in 1 Moore *Digest of International Law*, p. 711 (1906), introduced into evidence before the Master as La. Exh. 356(3). Also see La. Exh. 154, 4 Whiteman, *Digest of International Law*, 274-75.



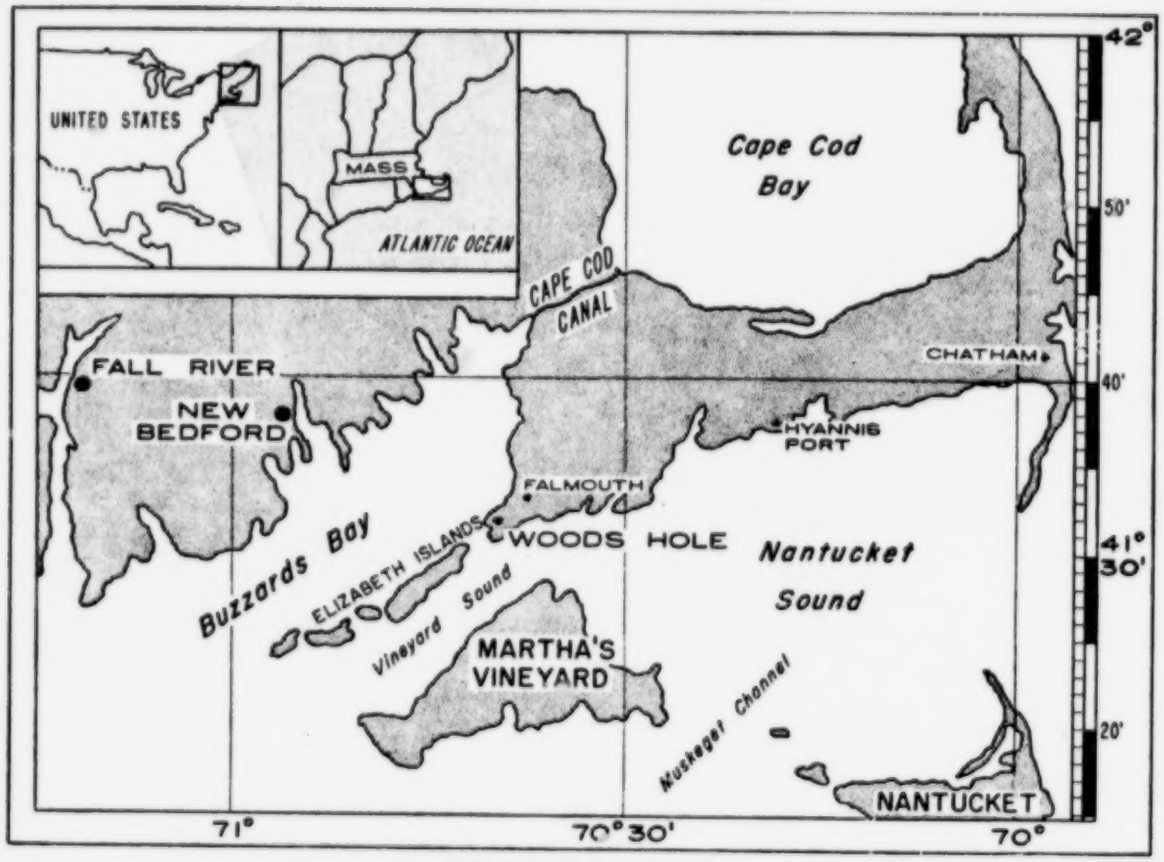
Portion of map of Cuba from Rand-McNally *THE International Atlas* (1969), p. 230.

1891: United States Supreme Court in Manchester v. Massachusetts, 139 U.S. 240, 243

The Commonwealth further offered evidence tending to show that the distance between the *headlands at the mouth of Buzzard's Bay,* viz., at Westport, in the county of Bristol, on the one side, and *the island of Cuttyhunk,* in the county of Dukes, *on the other side,* was more than one and less than two marine leagues. The island of Cuttyhunk is the most southerly of the chain of islands lying to the eastward of Buzzard's Bay, and known as the Elizabeth Islands. The distance across said bay at the point where the acts of the defendant were done is more than two marine leagues, and the opposite points are in different counties. The defendant did not dispute any of the testimony offered by the Commonwealth .... (Emphasis added.)

Manchester v. Massachusetts, 139 U.S. 240, 243 (1891).

Map of Buzzard's Bay



BUZZARDS BAY

Strohl, *International Law of Bays* at 77.

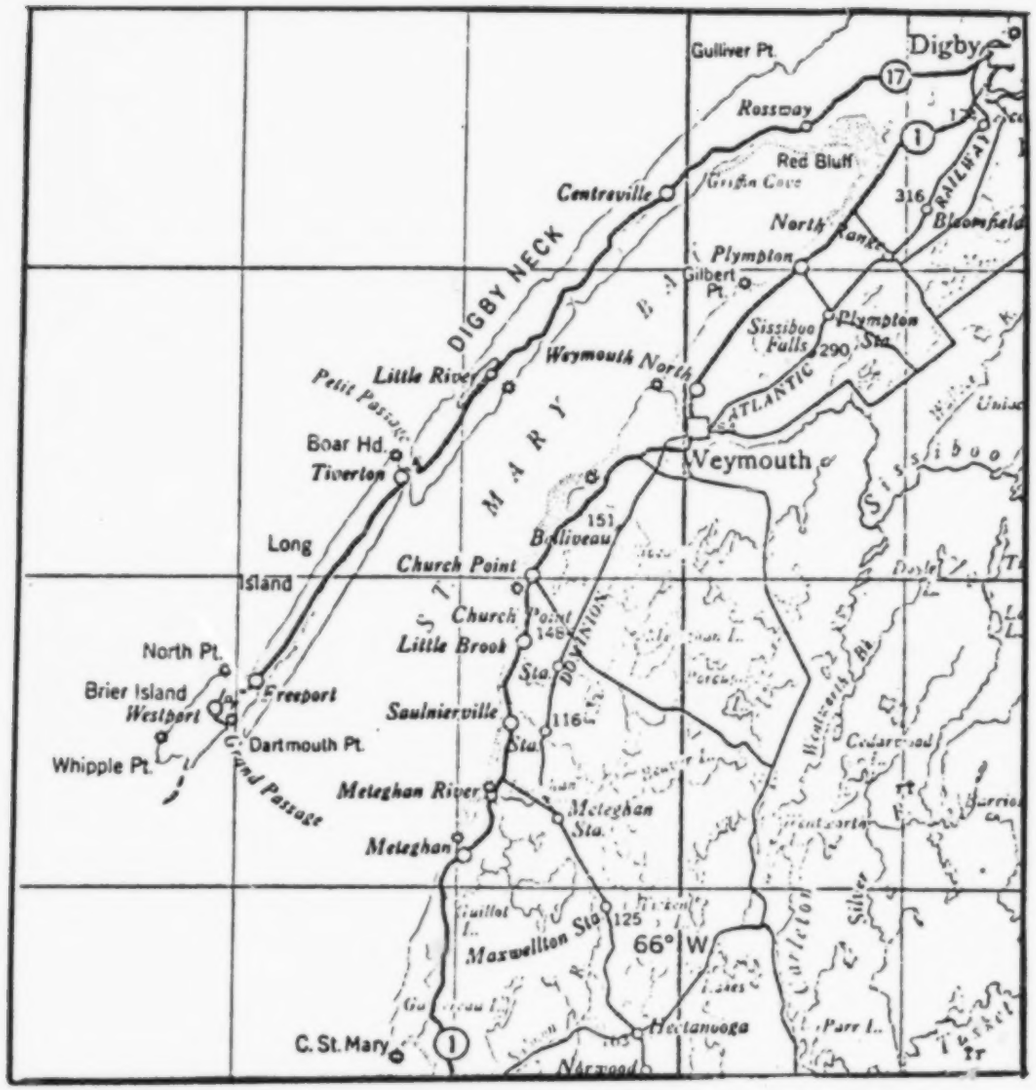
1910: The North Atlantic Coast Fisheries Arbitration

For or near the following bays the limits of exclusion shall be three marine miles seawards from the following lines, namely:

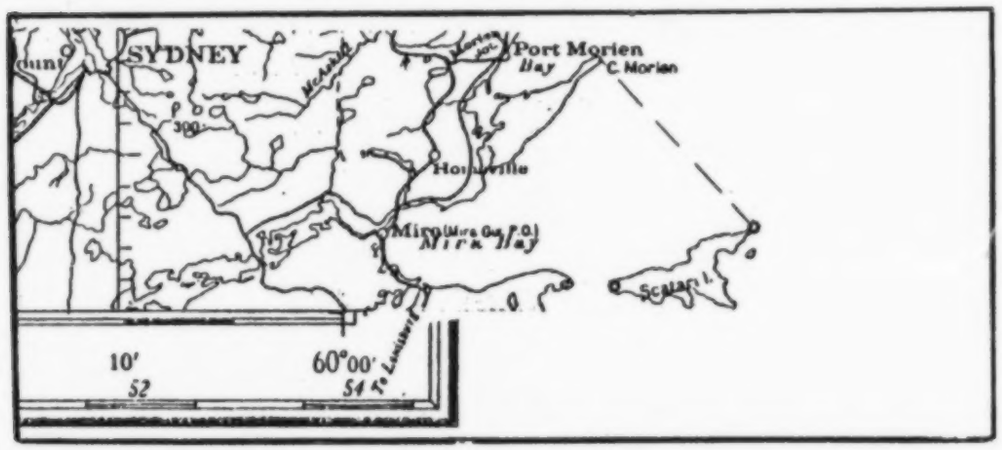
For or near Barrington Bay, in Nova Scotia, the line from the light on Stoddart Island to the light on the south point of Cape Sable, thence to the light at Baccaro Point; at Chedabucto and St. Peter's Bays, the line from Cranberry Island light to Green Island light, thence to Point Rouge; *for Mira Bay, the line from the light on the east point of Scatari Island to the northeasterly point of Cape Morien*; and at Placentia Bay, in Newfoundland, the line from Latine Point, on the eastern mainland shore, to the most southerly point of Red Island, thence by the most southerly point of Merasheen Island to the mainland.

Long Island and Bryer Island, on St. Mary's Bay, in Nova Scotia, shall, for the purpose of delimitation, be taken as the coasts of such bays. [Emphasis added.]

Finding #2 in the *North Atlantic Coast Fisheries Arbitration*, Scott *The Hague Court Reports*, 189 (1906).



Portion of Yarmouth-Windsor map (Nova Scotia) published by the Canadian government showing Brier and Long Islands, which form the side of St. Mary Bay. (La. Exh. 325.)



Portion of Yarmouth-Windsor map (Nova Scotia) published by the Canadian government showing closing line designated for Mira Bay which utilizes Scatari Island as a headland.

1930: Hague Conference—International and United States Proposals Treating Island Groups and Straits Leading to Inland Waters

ANNEX I.

BASES OF DISCUSSION DRAWN UP BY THE PREPARATORY COMMITTEE, ARRANGED IN THE ORDER WHICH THAT COMMITTEE CONSIDERED WOULD BE MOST CONVENIENT FOR DISCUSSION AT THE CONFERENCE

* * * * *

Basis of Discussion No. 13.

In the case of a group of islands which belong to a single State and at the circumference of the group are not separated from one another by more than twice the breadth of territorial waters, the belt of territorial waters shall be measured from the outermost islands of the group. Waters included within the group shall also be territorial waters.

The same rule shall apply as regards islands which lie at a distance from the mainland not greater than twice the breadth of territorial waters.

Basis of Discussion No. 17

Where a strait is merely a channel of communica-

U.S. Exh. 74, League of Nations, Acts of the Conference for the Codification of International Law, Held at the Hague from March 13th to April 12, 1930, III Minutes of the Second Committee, Territorial Waters, C.351(b). M.145(b) 1930.

tion with an inland sea, the rules regarding bays apply to such strait and sea.

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ANNEX II.

OBSERVATIONS AND PROPOSALS REGARDING THE BASES OF DISCUSSION PRESENTED TO THE PLENARY COMMITTEE BY VARIOUS DELEGATIONS.

Japan.

AMENDMENTS TO BASES OF DISCUSSION NOS. 4, 5, 8, 9, 11, 13, 14, AND 15, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 18TH, 1930.

Basis of Discussion No. 13.

1. Delete the first sentence of the first paragraph from the words "twice the breadth of territorial waters" to the end, and substitute the words "ten miles", and add immediately afterwards the following sentence: "The whole group shall be regarded as a single unit".

2. Omit the second sentence of the first paragraph.

3. In the second paragraph, substitute for the words "twice the breadth of territorial waters", the words "ten miles".

The article as revised will read as follows:

> "In the case of a group of islands which belong to a single State and at the circumference of the group are not separated from one another

> by more than *ten miles, the whole group shall be regarded as a single unit.* The same rule shall apply as regards islands which lie at a distance from the mainland not greater than *ten miles.*" [p. 189.]

AMENDMENTS TO BASES OF DISCUSSION NOS. 3 AND 6, 7, 8, 9 AND 18, 12, 13 AND 14, 10, 11, 15, 16, 17, AND PROPOSALS FOR THREE NEW BASES OF DISCUSSION CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 27TH, 1930.

These Bases are submitted in the interest of finding a set of formulae for the delimitation of territorial waters which shall be simple in application and definite in result. This is believed to be the first attempt to formulate a comprehensive and systematic body of rules for this purpose, and it is suggested that they be studied objectively, so far as practicable, on charts and maps. Two pages of diagrams are attached to illustrate the text.

* * * *

F. Straits.

Bases of Discussion Nos. 15, 16 and 17.

The delimitation of territorial waters in straits shall be made in the following manner:

* * * *

3. In the absence of agreement to the contrary, where a strait is merely a channel of communication with an inland sea, the rules regarding bays apply to such strait.

G. Simplification and Assimilation.

New Basis of Discussion.

1. Where the delimitation of territorial waters would result in leaving a small area of high sea totally surrounded by territorial waters of one or more States, the area is assimilated to the territorial waters of such State or States.

2. Where the delimitation of territorial waters, as prescribed in the foregoing articles, results in a pronounced concavity such that a single straight line, not more than four nautical miles in length, drawn from the envelope of the arcs of circles on one side to the envelope of the arcs of circles on the other side entirely closes an indentation, the coastal State may regard the body of water enclosed within the envelope of the arcs of circles and said straight line as an extension of its territorial waters if the area exceeds the area of a semi-circle whose diameter is equal to the length of the straight line; if the coastal State chooses to assimilate these waters it shall notify the nations which may be interested therein. [pp. 197-201]

Appendix 2.

REPORT OF THE SECOND SUB-COMMITTEE.

* * * *

GROUPS OF ISLANDS

Observations.

With regard to a group of islands (archipelago) and islands situated along the coast, the majority of the Sub-Committee was of opinion that a distance of

ten miles should be adopted as a basis for measuring the territorial sea outward in the direction of the high sea. Owing to the lack of technical details, however, the idea of drafting a definite text on this subject had to be abandoned. The Sub-Committee did not express any opinion with regard to the nature of the waters included within the group.

— — — — — — —

STRAITS.

Observations.

The application of the article is limited to straits which serve as a passage between two parts of the high sea. It does not touch the regulation of straits which give access to inland waters only. As regards such straits, the rules concerning bays, and, where necessary, islands, will continue to be applicable. [pp. 217-20]

1930: S. W. Boggs's Explanation of the United States Proposal at the Hague Conference

Efforts of the conference to define a group of islands, in terms of numbers, size, and relative position of islands, did not produce practical results. The real reason for making a special case of islands is that the three-mile envelope leaves undesirable pockets. It is the American viewpoint that the only practicable way to eliminate these pockets is to consider the pockets as pockets, rather than to consider the islands as islands. *It is believed that the general proposal for the assimilation of anomalous pockets of high sea by a geometrical means avoids the definition of a "group of islands,"* just as the geometrical solution of the proposal relating to bays avoids the definition of "bays," and that in both cases the desired results are obtained in an entirely satisfactory manner. [Emphasis added.]

U.S. Exh. 75, Boggs, "Delimitation of the Territorial Sea: The Method of Delimitation Proposed by the Delegation of the United States at the Hague Conference for the Codification of International Law," 24 *American Journal of International Law* 541 (1930).

1940: Census Bureau Delimitation of Internal Waters

A solution for the problem of setting outer limits for the United States was obtained by special adaptations, pertaining to embayments and islands, of the excellent principles established by S. W. Boggs, Geographer of the Department of State, in delimiting the territorial waters of the United States."[94] These adaptations of Boggs' principles resulted in the following rules for delimiting coastal and Great Lakes water,"[95] and thereby, in part, for setting the outer water limits of the United States (fig. 8): *(1) where the coast line is regular it shall be followed directly unless there are off-shore islands within ten nautical miles;*"[96] (2) where embayments occur having headlands of less than ten and more than one nautical mile in width, a straight line connecting the headlands shall set the limits;"[97] however, (3) the coast line shall be followed if the indentation of the embayment is so shallow that its water area is less than the area of a semicircle drawn using the said straight line as a diameter;"[98] and *(4) two or more islands less than ten and more than one nautical mile from shore shall be connected by a straight line or lines, and other straight lines shall be drawn to the shore from the nearest point on each end island.*"[99] [Emphasis added.]

La. Exh. 52(1), Proudfoot, *Measurement of Geographic Area*, Dept. of Commerce, Bureau of the Census (1946) p. 33.

[94]Boggs, S. W., "Delimitation of the Territorial Sea, The Method of Delimitation Proposed by the Delegation of the United States at the Hague Conference for the Codification of International Law," *American Journal of International Law*, Vol. 24 (July, 1930), 541-555.

[95]Termed "State water" and not subdivided among adjoining counties or minor civil divisions.

[96]See Atlantic coastal strip, C. of fig. 8., plate I.

[97]See Atlantic coastal strips A. and B. of fig. 8., plate I.

[98]See Pacific coastal strips H., J., K. and L. of fig. 8., plates XII and XIII.

[99]See treatment of Florida Keys, Atlantic coastal strip Q. of fig. 8.

1951: Letter from the United States State Department to the Justice Department Explaining National Position on International Law of the Sea

With respect to a strait which is merely a channel of communication to an inland sea, however, the United States took the position, with which the second subcommittee agreed, that the rules regarding bays should apply (Act of Conference, 201, 220).

U.S. Exh. 93, a letter from James E. Webb, State Department, to J. H. McGrath, Justice Department, dated November 13, 1951, also published in Appendix D of 1 Shalowitz *Shore and Sea Boundaries*, pp. 354-56 (1962).

1952: United States v. California, Report of the Special Master

Straits

Subject to the special case of historical waters, the position of the United States as to straits connecting two areas of open sea, as set forth by the Secretary of State (*ante* p. 14), is that if both entrances are less than six nautical miles wide the strait is territorial waters but never inland waters. Otherwise, the marginal belt is to be measured in the ordinary way. *If the strait is merely a channel of communication to an inland sea the ten-mile rule regarding bays should apply.* [Emphasis added.]

Report of the Special Master in *United States v. California*, No. 6, Original, October Term, 1952, 332 U.S. 19. Submitted October 14, 1952; Filed November 10, 1952, p. 27.

The International Law Commission's Special Rapporteur for the regime of the territorial sea, J. P. A. François, included in his first report in 1952 the following articles and comments on reefs, islands, and groups of islands: [p. 295]

* * * *

"[*Article 10. Groups of Islands:*] With regard to a group of islands (archipelago) and islands situated along the coast, the ten-mile line shall be adopted as the base line for measuring the territorial sea outward in the direction of the high sea. The waters included within the group shall constitute inland waters.

"*Comment* [p. 296]

* * * *

"3. The Rapporteur has inserted article 10 not as expressing the law at present in force, but as a basis of discussion should the Commission wish to study a text envisaging the progressive development of international law on this subject." A CN.4 53, pp. 28-30; II *Yearbook of the International Law Commission 1952*, pp. 25, 33, 36-37. [p. 297]

François' second report to the International Law Commission in February 1953 effected the following changes (II *Yearbook of the International Law Commission 1953*, pp. 57, 65-70):

* * * *

The final sentence of article 10 which had read that the waters within a group of islands constituted inland waters (also *supra*) was deleted,

* * * *

At the invitation of Professor François, a five-man group of technical experts, acting in their personal capacity, met at The Hague from April 14 to 16, 1953, in order to examine certain questions of a technical nature raised during the discussions of the International Law Commission. (For the membership of the Committee of Experts, see *ante*, p. 146.) Questions submitted by the Special Rapporteur to the Committee of Experts together with the answers of the latter regarding delimitation of reefs and islands were as follows:

* * *

III

"If the low-water line may be replaced by a straight base-line, as indicated by the International Court of Justice in the Anglo-Norwegian Fish-

eries Case, what technical questions may arise as to

. . . . . .

"C. the islands, rocks and shallow waters within T miles before the coast (T standing for the width of the territorial sea)?

. . . . . .

"2. Such 'straight base-lines' might be drawn —if specifically justified by international law— between headlands on the coastline or between such headlands and islands less than 5 miles from the coast or between such islands, provided such headlands and/or islands are not further than 10 miles apart.

"3. The Committee considered that between three or more islands at a distance of less than 5 miles from each other, 'straight base-lines' might be drawn. In that case, these islands constitute a *group*. Waters lying within the outer base-lines around a group should be considered as inland waters.

"4. The Committee recognizes as a special case a group of islands in which one, but only one, of the said connecting lines exceeds 5 miles though not 10 miles in length. This case may be called a 'fictitious bay'.

"5. A 'fictitious bay' may also be formed by a string of islands taken together with a portion of the mainland coastline as provided for under 2 B.

"6. The Committee agreed that 'straight base-lines' should not be drawn to and from dry-

ing rocks and shoals. Their part in measuring the territorial sea has been stated sub I."

Report of the Committee of Experts, April 1953, contained in Addendum to the Second Report on the Regime of the Territorial Sea by J. P. A. François, Special Rapporteur, A/CN.4/61/Add.1, Annex, May 18, 1953, pp. 1-4.

François' First Report, Apr. 4, 1952, Doc. A/CN.4/53, is printed in II *Yearbook of the International Law Commission 1952*, pp. 25, 32-33, 36-37. François' Second Report, Doc. A/CN.4/61, Feb. 19, 1953, is printed in II *Yearbook of the International Law Commission 1953*, pp. 57, 65, 67, 68-70. The addendum to the Second Report, Doc. A/CN.4/61/Add. 1, by François, together with the annexed Report of the Committee of Experts, is printed *ibid.*, pp. 75, 77, 78.

As a result of the Experts' Report, François submitted the following amendment and additions to his second report in May of 1953:

* * * *

"*Article 5a*

. . . . . .

"2. In general, the maximum permissible length for a straight base-line shall be 10 miles. The base-lines may be drawn between headlands on the coastline or between such headlands and islands, provided such headlands and/or islands are not further than 10 miles apart. The base-lines should not be drawn to and from drying rocks and shoals. These lines constitute the delimi-

4 *Whiteman* 299-300.

tation between inland waters and the territorial sea.

. . . . . .

"[Article 9. Islands (unchanged).]

"*Article 10*

"*Group of islands*

"Article 10 is modified as follows:

"1. Between three or more islands at a distance of less than 5 miles from each other, a 'straight base-line' may be drawn. In that case, these islands constitute a *group*. Waters lying within the outer base-lines around a group shall be considered as inland waters.

"2. A group of islands in which one, but only one, of the said connecting lines exceeds 5 miles though not 10 miles in length, constitutes a "fictitious bay'.

"3. A 'fictitious bay' may also be formed by a string of islands taken together with a portion of the mainland coastline as provided under article 6, paragraph 5." (A.CN.4/61/Add.1, pp. 5-6, 7.)

Addendum to François' Second Report, May 18, 1953, printed in II *Yearbook of the International Law Commission, 1953*, pp. 75, 76, 77.

1954: International Law Commission

In his third report in February 1954, François simplified his draft text on reefs to read:

* * * *

As to "Groups of islands", the third report and comment read:

> "[*Article 12. Groups of Islands:*] 1. The term 'group of islands', in the juridical sense, shall be deemed to mean three or more islands enclosing a portion of the sea when joined by straight lines not exceeding five miles in length, except that one such line may extend to a maximum of ten miles.
>
> "2. The straight lines specified in the preceding paragraph shall be the base lines for measuring the territorial sea; waters lying within the area bounded by such base lines and the islands themselves shall be considered as inland waters.
>
> "3. A group of islands may likewise be formed by a string of islands taken together with a portion of the mainland coastline. The rules set forth in paragraphs 1 and 2 of this article shall apply *pari passu*.
>
> "*Comment*
>
> "Sub-Committee II of the 1930 Conference abandoned the idea of drafting a text on this subject. The Committee of Experts endeavoured to provide also for this case. In drafting the article, the rapporteur followed the Committee's suggestions." (*Ibid.*, p. 13.)

4 *Whiteman* 300-01.

1955: International Law Commission

At its seventh session, held in 1955, the International Law Commission did not modify its 1954 text of article 10. It commented:

> "The Commission had intended to follow up this article with a provision concerning groups of islands. Like The Hague Conference for the Codification of International Law of 1930, the Commission failed to overcome the difficulties in the way of carrying out this intention. . . . Moreover, article 5 [on straight base lines] may be applicable to groups of islands situated off the coasts, while the general rules will normally apply to other islands forming a group." *Report of the International Law Commission Covering the work of its seventh session, 2 May-8 July 1955*, U.N. Gen. Ass. Off. Rec. 10th Sess., Supp. No. 9 (A/2934), p. 18. [For text evolved at its eighth session, with commentary, see *ante*, pp. 294-295.]

1955: U.S. Position on Cuban Decree No. 1948:

> "Cuban Law Decree No. 1948 of January 25, 1955, stated in article I that: 'The waters between the coasts of the Island (of Cuba) and all adjacent keys, when the distance between them and between the keys themselves does not exceed 10 miles, are declared interior seas.' [Amembassy, Habana, to the Department of State, despatch No. 776, Feb. 11, 1955.] The U.K. and U.S. *protested other portions of this law*. . . . [Emphasis added.]

1956: International Law Commission

The text evolved by the International Law Commission with respect to islands (article 10), and contained in its 1956 and final report, together with its Commentary thereon, read:

"*Article 10*

"Every island has its own territorial sea. An island is an area of land, surrounded by water, which in normal circumstances is permanently above high-water mark.

"*Commentary*

* * * *

"(3) The Commission had intended to follow up this article with a provision concerning groups of islands. Like The Hague Conference for the Codification of International Law of 1930, the Commission was unable to overcome the difficulties involved. The problem is singularly complicated by the different forms it takes in different archipelagos. The Commission was prevented from stating an opinion, not only by disagreement on the breadth of the territorial sea, but also by lack of technical information on the subject. It recognizes the importance of this question and hopes that if an international conference subsequently studies the proposed rules it will give attention to it.

"(4) The Commission points out, for purposes of information, that article 5 may be applicable to groups of islands lying off the coast."

Report of the International Law Commission Covering the work of its eighth session, 23 April-4 July 1956, U.N. Gen. Ass. Off. Rec. 11th Sess., Supp. No. 9 (A/3159), pp. 16-17; II *Yearbook of the International Law Commission 1956*, pp. 253, 270.

4 *Whiteman* 294-95.

1958: Geneva Convention on the Territorial Sea and the Contiguous Zone

Article 10 of the Convention on the Territorial Sea and the Contiguous Zone, concluded in 1958 at the Geneva Conference on the Law of the Sea, contains the following provisions with reference to islands:

"1. An island is a naturally-formed area of land, surrounded by water, which is above water at high-tide.

"2. The territorial sea of an island is measured in accordance with the provisions of these articles."

U.N. Doc. A/CONF.13/L.52; II *U.N. Conference on the Law of the Sea, Plenary Meetings*, pp. 132, 133; S. Ex. J, 86th Cong., 1st sess., pp. 14, 16; XXXVIII *Bulletin*, Department of State, No. 992, June 30, 1958, pp. 1111, 1112. Entered into force Sept. 10, 1964. U.S. TIAS 5639; 15 UST 1606, 1609.

4 *Whiteman* 295.

1958: U.S. Brief in United States v. Louisiana, et al., No. 11, Original

While the United States denies that the phrase, "including all islands within three leagues of the coast," described any submerged land, we do agree that Louisiana is entitled, though for a different reason, to the submerged lands between its islands and mainland. *It happens that all the islands on the coast of Louisiana are so situated that the waters between them and the mainland are sufficiently enclosed to constitute inland waters*; consequently the lands underlying those waters necessarily passed to the State upon its entry into the Union. *Pollard v. Hagan*, 3 How. 212. Thus the islands, together with the line marking the outer limit of the intervening inland waters, constitute the "coast" of Louisiana in the sense of the Submerged Lands Act. *We make this explanation lest the dispute over the meaning of the Act of Admission should give the impression that the submerged lands within the islands are contested here.* We likewise concede the State's right to the submerged lands within three miles seaward of the islands, under the ordinary three-mile rule. We deny its right to more. [Emphasis added.]

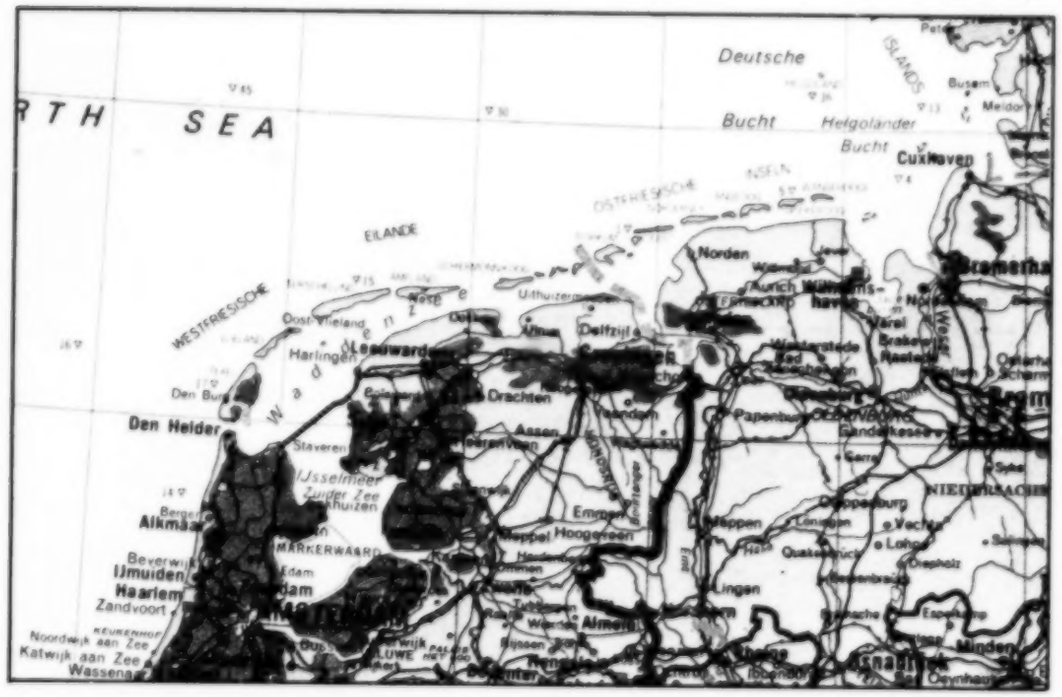
Brief for the United States in Support of Motion for Judgment on Amended Complaint in *United States v. Louisiana, et al.*, No. 11, Original, May 15, 1958, pp. 177-78.

1958: Historic Bays Memorandum by the Secretariat of the United Nations

The Zuyder Zee

* * * *

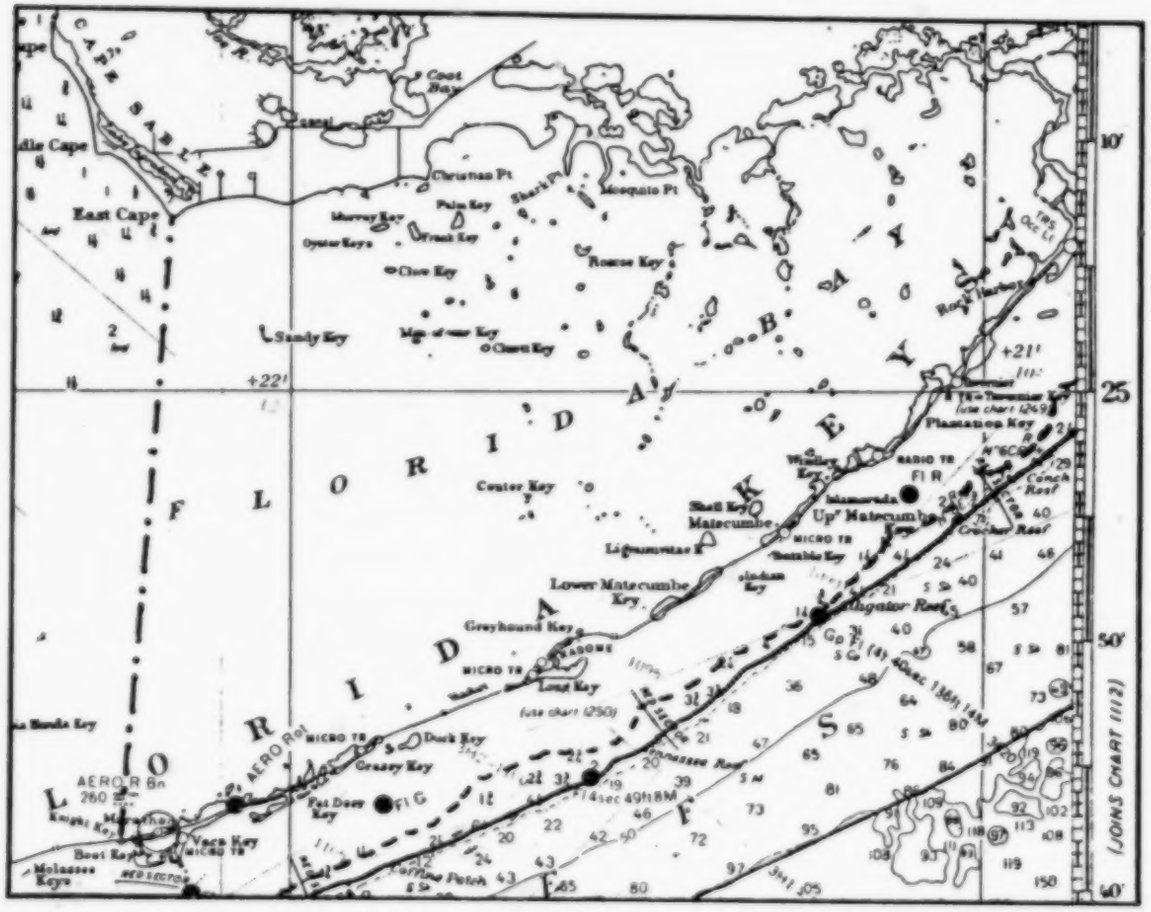
34. The Netherlands title to this sea can be based not only on a historic right proper but also on ordinary


Deutsche
Bucht
Helgoländer
Bucht
Cuxhaven
EILANDE
WESTFRIESCHE
Den Helder
Alkmaar
IJmuiden
Haarlem
Zandvoort
Harlingen
Leeuwarden
Dokkum
Drachten
Assen
Emmen
Hoogeveen
Meppel
Hoyerswerda
Lingen
Almelo
Papenburg
Leer
Norden
Emden
Delfzijl
Uithuizen
Bremerhaven
Oldenburg
Osnabrück
Minden
Hannover
Wilhelmshaven
Wesermünde
Cuxhaven
Meldorf
Husum
Westerstede
Rastede
Varel
Jever
Sögel
Lohne
Vechta
Cloppenburg
Quakenbrück
Lingen
Rheine
Ibbenbüren
Espelkamp
Lübbecke
Bad Oeynhausen
Detmold
Holzminden
Northeim
Einbeck
Göttingen
Soltau
Celle
Uelzen
Lüneburg
Stade
Buxtehude
Harburg
Bremen
Verden
Nienburg
Hameln
Hildesheim
Peine
Braunschweig
Wolfsburg
Gifhorn
Salzgitter
Goslar
Wernigerode
Halberstadt
Quedlinburg
Aschersleben
Bernburg
Staßfurt
Schönebeck
Magdeburg
Burg
Genthin
Stendal
Tangermünde
Osterburg
Seehausen
Gardelegen
Salzwedel
Wittenberge
Perleberg
Pritzwalk
Neuruppin
Fehrbellin
Rathenow
Nauen
Potsdam
Brandenburg
Belzig
Jüterbog
Luckenwalde
Zossen
Königs Wusterhausen
Fürstenwalde
Frankfurt
Eisenhüttenstadt
Guben
Forst
Cottbus
Spremberg
Hoyerswerda
Weißwasser
Niesky
Görlitz
Zittau
Bautzen
Kamenz
Dresden
Meißen
Riesa
Torgau
Oschatz
Grimma
Leipzig
Borna
Altenburg
Zeitz
Weißenfels
Naumburg
Merseburg
Halle
Bitterfeld
Wittenberg
Lutherstadt
Dessau
Köthen
Zerbst
Jessnitz
Roßlau
Coswig
Wittenberg
Lutherstadt
Torgau
Eilenburg
Delitzsch
Bad Düben
Wurzen
Grimma
Oschatz
Riesa
Meißen
Dresden
Pirna
Freital
Dippoldiswalde
Sebnitz
Neustadt
Bad Schandau
Sebnitz
Zittau
Löbau
Bautzen
Kamenz
Hoyerswerda
Weißwasser
Niesky
Görlitz
Forst
Guben
Eisenhüttenstadt
Frankfurt
Fürstenwalde
Königs Wusterhausen
Zossen
Jüterbog
Luckenwalde
Belzig
Brandenburg
Potsdam
Nauen
Rathenow
Fehrbellin
Neuruppin
Pritzwalk
Perleberg
Wittenberge
Salzwedel
Gardelegen
Seehausen
Osterburg
Tangermünde
Stendal
Genthin
Burg
Magdeburg
Schönebeck
Staßfurt
Bernburg
Aschersleben
Quedlinburg
Halberstadt
Wernigerode
Goslar
Salzgitter
Gifhorn
Wolfsburg
Braunschweig
Peine
Hildesheim
Hameln
Nienburg
Verden
Bremen
Harburg
Buxtehude
Stade
Lüneburg
Uelzen
Celle
Soltau

cedes nevertheless that certain small bays, among others the Zuyder Zee, should be regarded as subject to the full and absolute sovereignty of the coastal State. Gidel[36] mentions the Zuyder Zee among the maritime areas which are sometimes designated as historic "but which should not be treated as falling within that category [of historic waters] because pursuant to the rules of the ordinary international law of the seas these areas are in any case internal waters".

1959: "Measurement of the U.S. Territorial Sea," by G. Etzel Pearcy, Geographer, Department of State, XL Bulletin, Department of State, No. 1044, June 29, 1959.

"The Convention on the Territorial Sea and the Contiguous Zone limits the entrance of any bay to not



La. Exh. 154, 4 Whiteman, *Digest of International Law*, 210, and Portion of Chart 1113, showing delimitation of Florida Bay recommended by Dr. G. E. Pearcy and established by Special Master Maris in *United States v. Florida*, No. 52, Original, *Report of the Special Master*, p. 85.

more than 24 nautical miles. In event that the distance between the natural entrance points of a bay exceeds that distance, a straight baseline of 24 miles is drawn within the bay in such a way as to enclose the maximum water area that is possible with a line of that length. Figure 3 [*infra*] illustrates the principle diagrammatically. The rule has practical application in Florida, where a closing line 24 miles in length extends from East Cape to Vaca Key to close off the maximum amount of water between the coast of Florida and the chain of keys curving south and east.

1960: Letter from the Justice Department to the U.S.C.&G.S. Regarding the United States Position Concerning Islands Along Louisiana's Coast

"This [the position of the U.S. regarding inland waters behind island fringes] is borne out by the letter dated February 29, 1960, from Honorable J. Lee Rankin, Solicitor General of the United States, to Rear Admiral H. Arnold Karo, Director Coast and Geodetic Survey, Department of Commerce, Washington 25, D.C., with a copy to Raymond T. Yingling, Assistant Legal Adviser, Department of State, and to Dr. G. Etzel Pearcy, Geographer, Department of State, in which Mr. Rankin stated:

> "On July 6, 1950, in response to a specific inquiry in connection with the case of United States v. Louisiana, 339 U.S. 699, the State Department advised us that Chandeleur Sound should be considered inland water. *On October 26, 1950, in the same connection, Dr. Boggs, then Geographer of the State Department, joined with representatives of the Department of the Interior and this Department in describing, on that basis, a line, (commonly referred to as the "Chapman Line") to represent the official position of the United States as to the coast line of Louisiana, that is, the base line for the three-mile belt.* We followed this position in our brief in support of our motion for judgment on the amended complaint in the related

Louisiana Brief before the Special Master, Vol. I, Part 1, pp. 59-60, quoting from La. Exh. 283(20).

case of United States v. Louisiana, et al., No. 11, Original, October Term, 1957, at page 177; a draft of that brief was submitted to the State Department in May, 1958, before it was filed, and no question was raised on this point. The position was repeated at pages 43-44 of our reply brief in the same case, a draft of which was likewise submitted to the State Department in August 1958. At that time, Mr. Yingling, Assistant Legal Adviser, did raise a question regarding Chandeleur Sound; but at a conference between him, Dr. Pearcy, and John F. Davis and George S. Swarth of this Department, it was agreed that we should continue to concede that the Sound is inland water. Because of this concession, it was unnecessary for Louisiana to press certain aspects of its argument as it might otherwise have wished to do." [Emphasis added.]

1960: United States v. Louisiana, et al., Supreme Court Decision

The Government concedes that *all the islands which are within three leagues of Louisiana's shore* and therefore belong to it under the terms of its Act of Admission, *happen to be so situated that the waters between them and the mainland are sufficiently enclosed to constitute inland waters.* Thus, Louisiana is entitled to the lands beneath those waters quite apart from the affirmative grant of the Submerged Lands Act, under the rule of *Pollard's Lessee* v. *Hagan.* 3 How. 212. Furthermore, *since the islands enclose inland waters, a line drawn around those islands and the intervening waters would constitute the "coast" of Louisiana within the definition of the Submerged Lands Act.* Since that Act confirms to all States rights in submerged lands three miles from their coast, the Government concedes that Louisiana would be entitled not only to the inland waters enclosed by the islands, but to an additional three miles beyond those islands as well. We do not intend, however, in pasing on these motions, to settle the location of the coastline of Louisiana or that of any other State. [Emphasis added.]

United States v. Louisiana, et al., 363 U.S. 1, 67 n. 108 (1960).

1961: Letter from the Solicitor General to the Director, U.S.C.&G.S.

March 6, 1961

Rear Admiral H. Arnold Karo
Director
Coast and Geodetic Survey
Department of Commerce
Washington, D. C.

Dear Admiral Karo:

In the case of *United States* v. *Louisiana et al.*, No. 10, Original, involving ownership of offshore submerged lands in the Gulf of Mexico, the Supreme Court's opinions of May 31, 1960 (363 U.S. 1 and 121), and decree of December 12, 1960, establish the dividing line between the federal and state property rights at a distance of three geographical miles from the coast lines of Louisiana, Mississippi, and Alabama and three leagues from the coast lines of Texas and Florida. The coast line is defined, as in the Submerged Lands Act, as the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.

We are now faced with the problem of giving precise application to the rather general terms of that decision. . . .

* * * *

La. Exh. 178, pp. 1-4, Letter from Archibale Cox, Solicitor General, to Admiral Karo, Director of the U.S.C.&G.S., dated March 6, 1961.

It will be necessary ultimately to establish a precise line as to all five of the Gulf States, but the solution of the problem is particularly important with respect to Louisiana, where a great deal of present production is involved. We therefore intend to proceed with respect to Louisiana first. As a basis for discussion, we have asked the Interior Department to furnish a proposed description of the coast line of Louisiana, based on the joint survey which it has been making with the State. I enclose a copy of the description prepared, in response to that request, by Mr. Donald B. Clement of the Division of Cadastral Engineering, Bureau of Land Management, to which I have added paragraph numbers for convenience of reference. I also enclose a memorandum written by Mr. George Swarth of this Department, commenting on Mr. Clement's proposed description, comparing it with the earlier description known as the Chapman Line and with maps prepared last year by Dr. G. Etzel Pearcy, the Geographer of the Department of State, and raising certain questions for further consideration.

In supporting our position as to the location of the coast line, it will be necessary to formulate the principles on which the description has been developed. I would like to submit for your consideration some statements of principles, derived from various sources, including the letter of November 13, 1951, from Acting Secretary of State James E. Webb to Attorney General J. Howard McGrath and the 1958 Convention on the Territorial Sea and Contiguous Zone.

* * * *

The principles that I suggest are as follows:

* * * *

(g) Waters enclosed between the mainland and off-lying islands which are so closely grouped that no entrance exceeds ten miles in width shall be considered inland waters.

* * * *

There are of course many questions raised by the foregoing propositions or by matters not covered by them. In particular, I should be glad to have your views on the following:

* * * *

(b) Under what circumstances should the coast line depart from the mainland to embrace offshore islands?

* * * *

(e) How are the 10-mile and semicircle rules applied to a series of adjoining and interconnected bays and screening islands such as are found along the south coast of Louisiana?

1961: Memo from A. L. Shalowitz to the Director, U.S.C.&G.S. (Karo)

[To] The Director March 10, 1961

[From] A. L. Shalowitz

Letter from Solicitor General

This is to bring to your attention the scope of the Solicitor General's request and what it will entail to prepare an appropriate reply which we may be called upon to back in any future litigation that may arise between the Federal Government and the State of Louisiana, in the event an agreement cannot be reached on the controversial aspects of the boundary problem.

1. As stated by the Solicitor General, "the questions involved relate to matters within the particular competence of the Coast and Geodetic Survey."

2. As I envision the request, it will involve the following:

(a) A critical study and analysis of the Louisiana boundary description prepared by the Bureau of Land Management.

(b) An evaluation of the comments by the Department of Justice in relation to the boundary description and the maps prepared by the Department of State.

(c) A study of the principles proposed by the De-

partment of Justice and the specific technical questions raised, all considered in the light of the position advocated by the United States at the 1930 Hague Conference for the Codification of International Law; of the "Chapman Line," which we helped formulate in 1950 and which was promulgated by the Government as the tentative boundary between Federal and State (Louisiana) rights; of the proceedings before the Special Master in the *California* case with which the Bureau was closely associated; of the technical recommendations of the Special Master to the Supreme Court; of the pertinent recommendations of the International Law Commission in 1956, considered in the light of the work of the Committee of Experts in 1953 (the State Department representative was in close touch with the Bureau on questions raised by the ILC); and finally of the Convention adopted at Geneva in 1958 on the Territorial Sea and the Contiguous Zone.

1961: Letter from Director, U.S.C.&G.S. to Solicitor General

"Honorable Archibald Cox
The Solicitor General of
the United States
Department of Justice
Washington 25, D.C.

My dear Mr. Solicitor General:

This is in reply to your letters of March 6 and March 22, 1961 (File 90-1-18-260), asking this Bureau's assistance and advice in formulating principles and procedures by which the term "coast line" as used in the Supreme Court's decree of December 12, 1960, may be given precise application to the Louisiana coast. The enclosed Memorandum, prepared by Mr. A. L. Shalowitz, of my staff, sets forth our views on the various questions raised in your letter of March 6. . . .

* * * *

The following materials were consulted in the preparation of the Memorandum: Supreme Court's Decree of December 12, 1960; charts showing the Pearcy line (1960); 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone; final report of the International Law Commission on the Law of the Sea (1956); Report of the Special Master in

La. Exh. 178, pp. 29-30, Letter from Admiral Karo, Director, U.S.C.&G.S., to Archibald Cox, Solicitor General, dated April 18, 1961, in response to Cox's letter of March 6, 1961. [Retyped verbatim from La. Exh. 178.]

the *California* case (1952); Letter of November 13, 1951, from Acting Secretary of State Webb to Attorney General McGrath; the Chapman Line description of 1950; Bases of Discussion submitted by the United States Delegation to the 1930 Hague Conference; Findings of the North Atlantic Fisheries Tribunal of 1910; and United States Coast and Geodetic Survey hydrographic surveys H-999 and M-1000, of 1869.

I trust this Memorandum will be of help to the Department of Justice in formulating the United States position in the pending litigation.

Sincerely,

(Signed) H. Arnold Karo

Rear Admiral, USC&GS
Director

Enclosure

MEMORANDUM IN REPLY TO LETTER OF MARCH 6, 1961, FROM THE SOLICITOR GENERAL, RE THE LOUISIANA COAST LINE

PART I

COMMENTS ON PRINCIPLES PROPOSED BY DEPARTMENT OF JUSTICE

* * * *

Item (g)

This principle is concurred in and is in conformity with the principle recommended in Part II, Item (b). It would probably be difficult to make this rule more specific because of the great variety of coastal configurations that might be encountered. Each case would call for a consideration on the merits and an equitable solution arrived at.

* * * *

PART II

RECOMMENDATIONS RE QUESTIONS RAISED BY DEPARTMENT OF JUSTICE

* * * *

Item (b)

RECOMMENDATION

The coast line should not depart from the mainland to embrace offshore islands, except where such islands either form a portico to the mainland and are

La. Exh. 178, pp. 31-68. Memorandum by A. L. Shalowitz of the U.S.C.&G.S. attached to Admiral Karo's response, dated April 18, 1961, to Solicitor General Cox's letter of March 6, 1961.

so situated that the waters between them and the mainland are sufficiently enclosed to constitute inland waters, or they form an integral part of a land form.

Commentary

(1) The first part of the recommendation is based on the position of the Government as enunciated in the letter of November 13, 1951 (par.(e)), from Acting Secretary of State Webb to Attorney General McGrath. This was the position taken by the Department of Justice in the *California* case and which the Special Master upheld. Under this part of the recommendation, each island, whether isolated or part of a group, would carry its own territorial belt. This is readily understood and easy to apply, and no additional rules are necessary, such as the ratio of the area of an island to the water area between it and the mainland. Where an island is within the territorial sea, drawing the coast line so as to embrace the island would have little effect on the extent of the intervening submerged lands. For any other situation, there is greater reason why they should be excluded from the coast line.

(2) The second part of the recommendation (the exceptional part) deals with situations characteristic of the Louisiana coast and did not arise in the *California* case. It was the basis for drawing the Chapman Line and is in conformity with the concession made by the Government in its Brief in the *Louisiana* case (p. 177). *

(3) When the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone becomes operative and it becomse permissible to take coastal islands into account for the purpose of drawing straight baselines between appropriate points but which "must not depart to any appreciable extent from the general direction of the coast," the difficulty of laying down specific rules for applying the general criteria of the convention should be recognized. The ultimate solution may lie in studying each case on the basis of the general criteria, but using the skjaorgaard coast of Norway as the limiting condition of conformity to the criteria.

(4) Insofar as determining which islands form part of a land form and which do not, no precise standard is possible. Each case must be considered within the framework of the principal rule. One indication of homogeneity might be a common low-water line.

Item (e)

RECOMMENDATION

In applying the 10-mile rule to a group of screening islands along a coast, no opening between such islands should exceed 10 miles. . . .

Commentary

(1) Limiting the distance between screening islands along a coast to 10 geographic miles is in accord with the general policy of the United States regarding minimum encroachment upon the high seas.

(2) The theory of the screening islands is that the waters between them and the mainland are sufficiently enclosed to constitute inland waters (see Part I, Item (g)). Hence, the openings are in the nature of straits leading to inland waters, which in accordance with the State Department Letter of November 13, 1951, the rules for bays apply. A 10-mile limitation on the entrance width of a bay is one of those rules. *

1962: Shalowitz's Conception of the Chapman Line

73. APPLICATION TO LOUISIANA COAST

As in the *California* case, the decree entered by the Court in *United States* v. *Louisiana*, 340 U.S. 899 (1950), was couched in the same general terms and described the lands involved as "lying seaward of the ordinary low-water mark on the coast of Louisiana, and outside of the inland waters." But, whereas, in the former, stipulations were entered into between California and the Federal Government as to the exclusion of certain areas from the operative effect of the Supreme Court decision (*see* 211), and other controversial areas were referred to a Special Master (*see* 2111), no such stipulations were entered into in the *Louisiana* case. Instead, the Secretary of the Interior promulgated tentative arrangements, subject to future congressional action, for the continuance of operations under state leases seaward of the low-water line and outside the limits of inland waters.[4] In order that the area subject to federal jurisdiction be known, particularly for some of the complex areas along the Louisiana coast, a jurisdictional line was adopted seaward of which the submerged lands were under the jurisdiction of the Federal Government.[5] Because the line was promulgated during the tenure of Secretary of the Interior Chapman it came to be known as the "Chapman Line."

1 Shalowitz, *Shore and Sea Boundaries*, 108.

731. THE CHAPMAN LINE—ITS TECHNICAL BASIS

The Chapman line was intended to represent graphically the ordinary low-water mark and the seaward limits of inland waters along the Louisiana coast.[6] Its description and plotting on the charts represented an effort to apply, as accurately as possible, the principles of delimitation advocated by the United States in the proceedings before the Special Master.[7] . . .

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[7]*These principles had been developed in international law or had been promulgated by the United States in its international relations. They involved the semicircular rule (see 421) and the 10-mile rule (see 43) for bays, and the rule for straits leading to inland waters. The latter situation did not arise in the California case. Along the Louisiana coast all islands are so situated in relation to the mainland and to each other as to enclose all waters landward of the islands as inland waters with the result that the islands constitute large segments of the coastline. Mahler v. Norwich and New York Transportation Company,* 35 N.Y. 352 (1866). Also *see* Brief for the United States in Support of Motion for Judgment on Amended Complaint 177, United States v. Louisiana et al., Sup. Ct., No. 11, Original, Oct. Term, 1957. *The openings between the numerous islands along the Louisiana coast constitute channels leading to inland waters and the rule as to bays becomes applicable* (*see* Part 3, 2218 (*c*)). [Emphasis added.]

1962: Shalowitz Discussion of Fringing Islands Along Louisiana's Coast

1621. SEAWARD LIMITS OF INLAND WATER

A. WHERE ISLANDS FRINGE A COAST

When the Chapman line was drawn along the Louisiana coast (see Part I, 731), pursuant to the decision in United States v. Louisiana, 339 U.S. 699 (1950), the principle followed in drawing the baseline was that waters enclosed between the mainland and offlying islands which were so closely grouped that no entrance exceeded 10 nautical miles in width were considered inland waters.

In formulating principles for delimiting the "coast line," as defined in the Submerged Lands Act, an amplification of the above procedure was recommended so that it would be of general application, to wit: "The coast line should not depart from the mainland to embrace offshore islands, except where such islands either *form a portico to the mainland and are so situated that the waters between them and the mainland are sufficiently enclosed to constitute inland waters,* or they form an integral part of a land form." [125]

[Emphasis added.]

* * * *

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[124]Within the author's knowledge there has neither been proposed nor developed thus far a geometric rule for determining the status (inland waters or open sea) of water areas

1 *Shalowitz* 161 (1962).

between islands and the mainland coast similar to the semicircular rule for bays. It would be difficult to develop such a rule for general application because of the complex of geographical configurations that might be encountered and would not be limited as in the case of bays to a single form of configuration. It has been proposed that the semicircular rule for bays be applied for a determination of the limit of inland waters behind straight baselines (*see* Part 3, 2211 A(*b*) note 17).

[125]Memorandum of Apr. 18, 1961, from the Director, Coast and Geodetic Survey, in reply to letter of Mar. 6, 1961, from the Solicitor General of the United States. The request set forth the problem of giving precise application to the rather general terms of the Supreme Court decision of May 31, 1960, and the decree of Dec. 12, 1960, which established the dividing line between federal and state property rights in the Gulf of Mexico at a distance of 3 geographic miles from the coastlines of Louisiana, Alabama, and Mississippi, and 3 leagues from the coastlines of Texas and Florida, and defined coastline as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." The Bureau's advice was sought in formulating principles on which to base the Government's position because "the questions involved [bays, inland waters, islands, ordinary low water, etc.] largely relate to matters within the particular competence of the Coast and Geodetic Survey." The Bureau's memorandum contained recommendations (including commentaries) on the principles to be established in defining "coast line" as it applied to various geographic configurations along the Gulf coast, particularly the Louisiana coast. Some of these recommendations are embodied in the discussion of the Geneva Convention on the Territorial Sea and the Contiguous Zone and the interpretation to be placed on some of the provisions (*see* Part 3, 221).

1962: Shalowitz Discussion of Island Group Status Under the Geneva Convention on the Territorial Sea and the Contiguous Zone

2211. DELIMITATION OF THE TERRITORIAL SEA

D. ISLANDS AND LOW-TIDE ELEVATIONS

b. Groups of Islands

This question of groups of islands cannot be considered as settled. The International Law Commission, while recognizing the importance of the question, was unable to reach a decision because of disagreement on the breadth of the territorial sea and because of a lack of technical information on the subject. It pointed out, however, that the rules with regard to straight baselines may be applicable to groups of islands lying off the coast.

1 *Shalowitz* 228 (1962). Discussion under Part III "Recent Developments in the Law of the Sea," Chapter 2 "United Nations Conferences on the Law of the Sea."

(e) *Straits leading to inland waters.*—Wherever the United States has insisted on the right of innocent passage through straits, denying them the status of inland waters, the claim has rested on the character of the strait as a passageway between two areas of high seas. No such right is claimed as to a strait leading only to inland waters. Such a strait is treated as a bay. Examples of this have already been discussed, including the straits leading into the Alaskan Archipelago (*supra*, pp. 105-107), straits leading to waters between Cuba and its encircling reefs and keys (*supra*, pp. 103-105), and Chandeleur Sound (*supra*, p. 110; see also, *infra*, pp. 153-155).[105]

[105]The proper application of this principle becomes a matter of some difficulty in situations where several straits lead to the same body of inland water; and a circularity is involved in situations where the "inland" status of that body depends on whether its entrances are to be subject to the ten-mile rule or to three-mile marginal belts. It may be that some of the applications have been unduly liberal—for example, in the case of Chandeleur Sound—but this need not concern us here, for, as we shall show, even accepting those liberal applications as correct, they do not reach the situation in California. See *infra*, pp. 151-155.

California attempts to analogize the Santa Barbara Channel to Chandeleur and Breton Sounds, in Louisiana, which the United States has recognized as inland waters (Brief, 33-34, n. 14; 82; 106-108). For present purposes, it is enough to observe that the widest entrances into Chandeleur and Breton Sounds are six miles, between Breton Island and Bird Island, and slightly less than ten miles, between Ship Island and the northernmost tip of the Chandeleur Islands. See U.S. Coast & Geodetic Survey Chart No. 1115. Thus, our concession as to Chandeleur and Breton Sounds involved no breach of the ten-mile limit. Other aspects of California's analogy are discussed *infra*, pp. 153-155.

1963: U.S. Brief in United States v. California—10-Mile Rule at Chandeleur Sound Versus Santa Barbara Channel

Finally, California points to the United States' recognition of Chandeleur and Breton Sounds, in Louisiana, as inland waters, and attempts to show that the Santa Barbara Channel is not distinguishable. Brief, 33-34, n. 14, and maps following 34; 82; 106-107. As we have pointed out (*supra*, p. 110), there is no opening into Chandeleur or Breton Sound wider than 10 miles while the western entrance to the Santa Barbara Channel, between Point Conception and Richardson Rock, is about 21 miles. Thus the analogy fails at the outset, unless California is entitled to the benefit of the 24-mile rule. But even apart from this, the two bodies of water are utterly dissimilar. The Santa Barbara Channel connects the high seas of the Pacific Ocean with other waters which we believe, and the Special Master found, are likewise high seas; and it is actually used as a route for shipping not going to or from local ports. Chandeleur and Breton Sounds, on the contrary, lead nowhere; they are simply an enclosed lagoon in a cul-de-sac of the Gulf of Mexico. Moreover, even if international traffic wanted, for some inexplicable reason, to go through the maneuver of making a loop into the sounds at one end and back out again at the other, it could

Brief for the United States in answer to California's Exceptions to the Report of the Special Master in *United States v. California*, No. 5, Original (1963) pp. 153-55.

not do so because there is not sufficient depth.[119] Not only is it not a "useful" route for international traffic, it is not even a feasible one. California is correct in saying (Brief, 107), that depth is not a recognized test of inland waters; but navigability is certainly a primary test of international straits.[120] The determinative distinction is that the Santa Barbara Channel is a used and useful channel for international traffic between areas of high seas, while Chandeleur and Breton Sounds are not.

[119] According to the soundings shown on Coast & Geodetic Survey Chart No. 1270, the depth is in general from 6 to 12 feet, but there is no passage as much as 12 feet deep between the northern and southern ends of the sounds.

[120] As tidewater, Chandeleur and Breton Sounds are in a legal sense "navigable waters," even in those parts that are too shallow for navigation. See *United States* v. *Turner*, 175 F. 2d 644, 647 (C.A. 5), *certiorari denied*, 338 U.S. 851. However, a strait is not subject to an international right of passage unless it is a useful route of navigation in its natural condition. Thus, the *Fisheries Case* held that the Indreleia (a navigational route along the Norwegian coast inside the islands) is not an international strait because its utility depends on navigational aids maintained by Norway. I.C.J. Reports, 1951, p. 116 at 132. The California channels are useful without artificial improvement. See Tr. 323, 330-331.

1963: U.S. Brief in United States v. California—U.S. Position on Straits Leading to Inland Waters off Cuba and Alaska

California refers (Brief, 73-74; 108, n. 62) to American recognition that Cuba's three-mile belt should be measured from its offshore keys and islands, and attempts to show that very long lines can be drawn between some of those islands and the main Cuban coast. The first reference to this subject was in a letter of August 10, 1863, from Secretary of State William H. Seward to Gabriel Tassara, the Spanish Minister, 1 Moore, *Digest of International Law* (1906), 711-712. Spain had argued that she was entitled to more than three miles of territorial water around Cuba because the presence of many offshore reefs and islands within three miles of the Cuban coast made a three-mile belt an inadequate defensive area. Secretary Seward made the obvious reply, that the three-mile belt should be measured from the offshore islands rather than from the shore of Cuba proper. This in itself was enough to answer the Spanish contention, and of course was plainly correct. We have always conceded that every island is entitled to a three-mile belt around it. However, Secretary Seward went on to express the view, based on his examination of maps, that the "line of keys is properly to be regarded as the exterior coast line,

Brief for the United States in Answer to California's Exceptions to the Report of the Special Maser in *United States v. California*, No. 5, Original, pp. 103-16.

and that the inland jurisdiction ceases there, while the maritime jurisdiction of Spain begins from the exterior sea front of those keys." Undoubtedly that is true of most of the Cuban keys, especially those closely grouped along the north coast where the principal difficulties with American shipping were arising. Whether Secretary Seward's statement must necessarily be understood as a categorical assertion that *every* islet off the Cuban coast forms part of a single exterior coast line seems doubtful;[80] but even if it is so understood, it is by no means necessary to join them by such long closing lines as California indicates.[81] Of seventeen lines, one exceeds the ten-mile limit by 7/16 miles. So small a concession to a foreign power, in the particular geographical situation there presented, may be dismissed as *de minimis*. Certainly it does not prove a policy of claiming on our own coasts the very long lines suggested by California.[82]

California refers (Brief, 76; 108, n. 62) to the line described by the United States in the Alaska Boundary Arbitration of 1903 as the "coast line" of the Alaska Archipelago, and shows on a map that lines longer than ten miles can be drawn between islands of that group. However, those lines are not the lines described by the United States in that arbitration.[83]

None of the closing lines actually described needs to exceed ten miles in length, and the United States repeatedly emphasized that none was to be drawn so as to be more than ten miles:

When "measured in a straight line from headland to headland" at their entrances, Chatham Strait, Cross Sound, Sumner Strait and Clarence Strait, by which this exterior coast line is pierced, measure less than ten miles. That fact, according to the authorities quoted in the British Counter Case, pp. 24-28, places them within the category of territorial waters. [5 *Proceedings of the Alaskan Boundary Tribunal*, S. Doc. No. 162, 58th Cong., 2d Sess. (Cong. Doc. Ser. No. 4603), Pt. I, Argument of the United States, pp. 15-16.]

[80]Secretary of State Hamilton Fish, writing on May 18, 1869, to Secretary of the Navy Adolph E. Borie, referred only to the three-mile belt around each key, without suggesting that the line of keys marked the limit of inland waters (1 Moore, *Digest of International Law* (1906) 713):

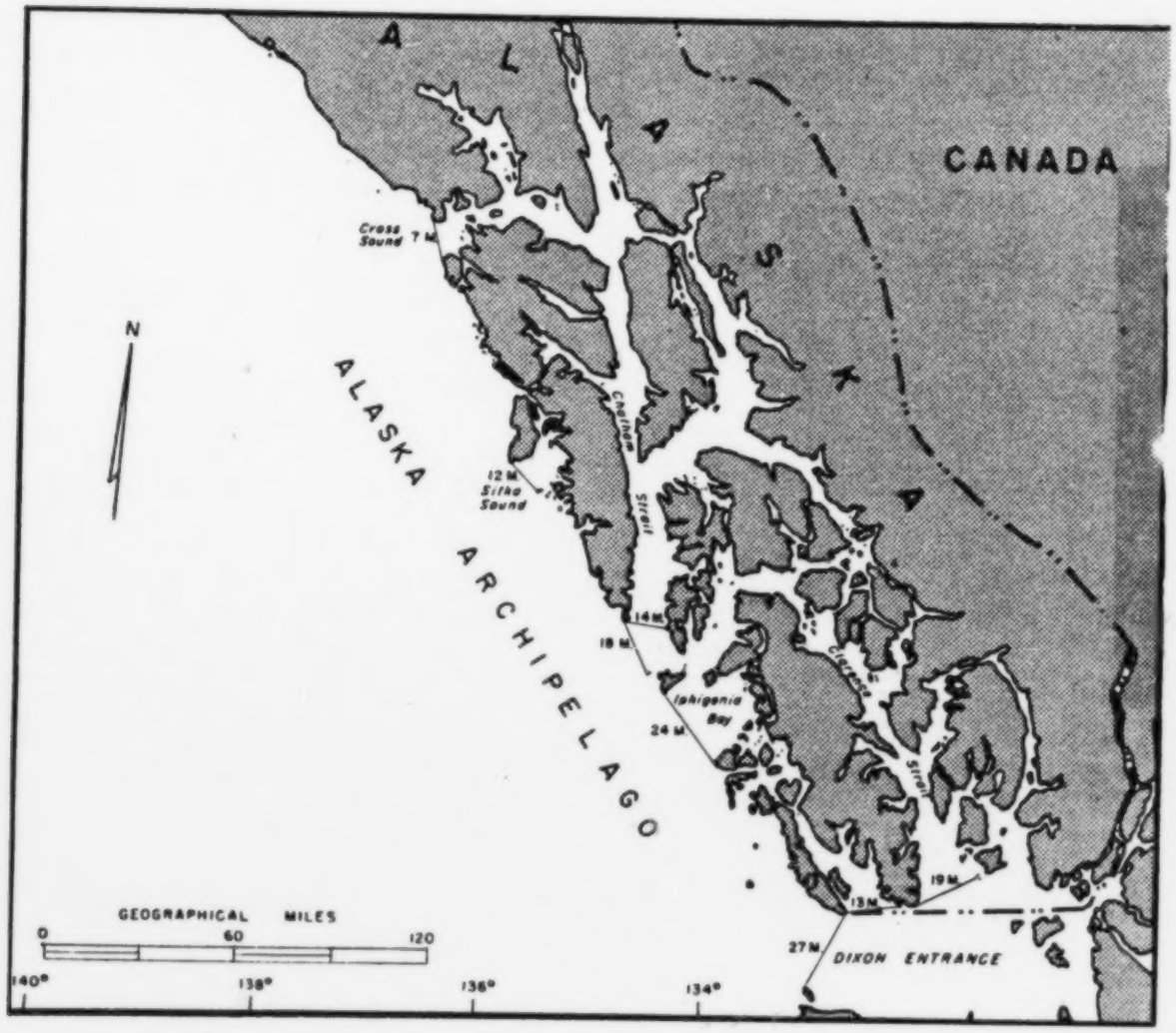
"The maritime jurisdiction of Spain may be acknowledged to extend not only to a marine league beyond the coast of Cuba itself, but also to the same distance from the coast line of the several islets or keys with which Cuba itself is surrounded. Any acts of Spanish authority within that line can not be called into question, provided they shall not be at variance with law or treaties."

[81]According to Naval Hydrographic Charts Nos. 2617, 2618 and 2620, the Gulf of Batabano, for which California shows closing lines of 23 miles at the east end 59 miles at the west (Brief opposite p. 74), can be enclosed by the following lines: Punta Oriental to Cayo Piedras, 7 miles; thence to an unnamed sandy islet at about 21°48′30″N., 81°12′15″ W., 10 miles; thence to Cayos de Dios, 10 miles; thence to Cayo Ingles, 4½ miles; thence to Cayo Largo, 7 miles; thence to Cayo Estofa, 2 miles; thence to Cayo Rosario, 7 miles; thence to Cayo Cantiles 1½ miles; thence to Cayo Avalos, 3 miles; thence to Cayos Aguardientas, 2 miles; thence to Cayo Campos, ½ mile; thence to Cayo Hicacos, ½ mile; thence to Cayo Matias, 2 miles; thence to the Isle of Pines, 4 miles; thence to Cayos los Indios, 5 miles; thence to Cayos de San Felipe, 8 miles; thence to Punta Santo Domingo, 10 7/16 miles.

[82]The question of how maritime limits should be drawn

where there are offshore islands is discussed *infra*, pp. 119-140. The present discussion is not intended to deal with that question beyond showing that the United States has not exceeded the ten-mile rule in that connection.

[83]The line claimed by the United States was described as follows (4 *Proceedings of the Alaskan Boundary Tribunal*, S.



Portion of a map of Alaska, *United States v. California*, No. 5, Original, *Brief in Support of Exceptions of the State of California to the Report of the Special Master*, dated October 14, 1952, Pursuant to Court Order of December 2, 1963, opposite p. 76.

Doc. No. 162, 58th Cong., 2d Sess. (Cong. Doc. Ser. No. 4602), Pt. I, Counter Case of the United States, p. 32):

"In the present instance the political or legal coast line drawn southward from Cape Spencer would cross to the northwestern shore of Chichagof Island and follow down the western side of that island and of Baranof Island to Cape Ommaney; at this point it would turn northward for a short distance and then cross Chatham Strait to the western shore of Kuiu Island; thence again turning southward along that shore and along the outlying islets west of Prince of Wales Island, the line would round Cape Muzon and proceed eastward to Cape Chacon; thence following northward along the eastern shore of Prince of Wales Island to Clarence Strait it would cross the latter at its entrance and proceed southeastward to the parallel of 54°40′ at the point where it enters Portland Canal."

1965: United States v. California, Supreme Court Decision

California asserts that the Santa Barbara Channel may be considered a "fictitious bay" because the openings at both ends of the channel and between the islands are each less than 24 miles.[38] The United States argues that the channel is no bay at all; that it is a strait which serves as a useful route of communication between two areas of open sea and as such may not be classified as inland waters.[39]

By way of analogy California directs our attention to the Breton and Chandleur Sounds off Louisiana which the United States claims as inland waters, *United States* v. *Louisiana*, 363 U. S. 1, 66-67, n.108. Each of these analogies only serves to point up the validity of the United States' argument that the Santa Barbara Channel should not be treated as a bay. The Breton Sound is a *cul de sac*. The Chandleur Sound, if considered separately from the Breton Sound which it joins, leads only to the Breton Sound. Neither is used as a route of passage between two areas of open sea. In fact both are so shallow as to not be readily navigable.[40]

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[38]The United States asserts that "international law recognizes no principle of 'fictitious bays.'" We find it unnecessary to decide that question. . . .

The openings at the ends of the Santa Barbara Channel are 11 miles and 21 miles.

United States v. California, 381 U.S. 139, 170-71 (1965).

[39]See Letter from Acting Secretary of State Webb to Attorney General McGrath, November 13, 1951, Senate Hearings 460. See also Senate Hearings 1084-1085 (remarks of Jack B. Tate).

[40]The depth in general ranges between 6 and 12 feet according to Coast and Geodetic Survey Chart No. 1270, but there is no passage as much as 12 feet deep connecting the ends of the sound. The sounds are "navigable waters" in the legal sense even in the parts too shallow for navigation. See *United States* v. *Turner*, 175 F. 2d 644, 647, cert. denied, 338 U.S. 851.

1966: United States v. California, Supplemental Decree

6. Roadsteads, *waters between islands, and waters between islands and the mainland are not per se inland waters.* [Emphasis added.]

United States v. California, 382 U.S. 448, 451 (1966).

1968: United States Brief in United States v. Louisiana

12. *Chandeleur and Breton Sounds.*—Under the Convention on the Territorial Sea and the Contiguous Zone, waters between the mainland and coastal islands do not have the status of inland waters unless the coastal nation elects to enclose them by straight baselines under Article 4. Prior to that Convention there was no international consensus on the subject; but *the United States had taken the position that such waters were inland waters at least in some circumstances. In accordance with that position, we have heretofore treated Chandeleur and Breton Sounds as inland waters in this case and its predecessor, United States v. Louisiana, No. 13, Original, October Term, 1948; No. 12, Original, October Terms, 1949-1950; No. 7; Original, October Terms, 1951-1960.*

In 1950 federal officials described the line, commonly known as the "Chapman Line," representing the federal position as to the proper coast line of Louisiana, which drew closing lines across the entrance to Breton Sound from Breton Island, by way of Bird Island, to the northern headland of Grand Bay, and

Motion by the United States for Entry of a Supplemental Decree as to the State of Louisiana (No. 2), Proposed Supplemental Decree and Memorandum in Support of the Motion of the United States and in Opposition to the Motion of the State of Louisiana, filed January 1968 in *United States v. Louisiana, et al.*, No. 9, Original, pp. 78-80.

across the entrance to Chandeleur Sound from the northern tip of the northernmost of the Chandeleur Islands to the western tip of the westernmost of the Ship Islands. On March 16, 1951, the United States asked Louisiana for an accounting on the basis of that line, under the decree of December 11, 1950, 340 U.S. 899. That line was used also as the baseline of the three-mile belt, called "Zone 1," which Louisiana is allowed to administer without impoundment of proceeds under the Interim Agreement of October 12, 1956. See Agreement Between United States of America and State of Louisiana Pursuant to Section 7 of the Outer Continental Shelf Lands Act and Act 38 of the Louisiana Legislature of 1956, paragraphs 2(a) and (6), and Exhibit "A" thereto, filed October 12, 1956, pursuant to the order of June 11, 1956, 351 U.S. 978, and Amended Exhibit "A," January 28, 1957, filed June 11, 1957. On the same basis we conceded in 1958 that the waters between the mainland and islands belonging to Louisiana under its Act of Admission were in fact sufficiently enclosed to constitute inland waters under the principles then being followed by the United States. See *United States* v. *Louisiana*, 363 U.S. 1, 67, fn. 108. Paragraph 3(d) of the supplemental decree of December 13, 1965, 382 U.S. 288, 292, entered on motion of the United States without objection by Louisiana, awarded to Louisiana certain submerged land in the entrance to Breton Sound on the same basis (but assuming a closing line from Breton Island directly to the eastern headland of Main Pass, seaward

of the original Chapman Line, in recognition of substantial intervening accretion at Main Pass).

We think that there would be much justification for asking at this time to be relieved of a concession, at variance with the Convention on the Territorial Sea and the Contiguous Zone, made four months before that Convention was signed by the United States, more than six years before it entered into force, and seven years before this Court announced that the grant made by the Submerged Lands Act of May 22, 1953, was to be measured by the rules of the Convention *rather than by the principles followed by the United States at the time the Act was passed.* However, we do not ask for such relief because we think it would not be in the public interest, at this late date, to upset a fundamental assumption that has guided the conduct of both parties and their lessees in a large area over a long period of time. We do point out, however, that since Louisiana's right to these sounds as inland waters rests solely on the basis of our adherence to our past concession, and not on any legal principle, there is no basis on which Louisiana can be allowed closing lines farther seaward than the concession warrants. [Emphasis added.]

I do not think that this conclusion need be reached with respect to the most easterly portion of this area, however, namely, the area between the mainland on the northwest and the upper Florida Keys on the southeast which lies east of a closing line running southwesterly from East Cape of Cape Sable to Knight Key in the Florida Keys, a distance of approximately 24 geographical miles. This area comprises for the most part very shallow water which is not readily navigable and nearly all of which is dotted with small islands and low-tide elevations. I find that this area is sufficiently enclosed by the mainland and the upper Florida Keys, which constitute realistically an extension of the mainland, to be regarded as a bay which constitutes inland waters of the State within the test applied in *United States v. Louisiana*, 1960, 363 U.S. 1, 66-67, fn. 108, and *United States v. Louisiana*, 1969, 394 U.S. 11, 60-66, and discussed in *United States v. California*, 1965, 381 U.S. 139, 171. Moreover, the character of this area as inland waters of the State of Florida appears to be conceded by the United States. It is this area which I designate in this report as Florida Bay. But the claim of the State to the waters of the Gulf of Mexico to the west of this area as a juridical bay must, in my opinion, be rejected.

Report of Albert B. Maris, Special Master, in *United States v. Florida*, No. 52, Original, pp. 38-39. (See Figure at p. 19, *supra*, of this appendix.)

APPENDIX B
SYLLABUS OF FINDINGS

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No. 9, ORIGINAL

In the
Supreme Court of the United States

OCTOBER TERM, 1973

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,

Defendants.

MOTION TO CLARIFY, AMEND AND SUPPLEMENT FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE TENTATIVE DRAFT OF THE PROPOSED REPORT OF THE SPECIAL MASTER

The State of Louisiana, in response to the invitation of the Special Master in his letter of February 21, 1974, files this motion to clarify, amend and supplement the findings of fact and conclusions of law contained in the tentative draft of the Special Master as to a report to be filed with the Court, and respectfully states:

LOUISIANA'S HISTORIC CLAIMS

East Bay

1. There is no dispute and the evidence proves that at least until 1918, East Bay qualified as a juri-

dical bay under principles then recognized by the United States in its internatonal relations.

A. East Bay was a juridical lay under principles advocated by the United States at least until 1918, as sustained by admissions of the United States in its *Suggested Fndings of Fact and Conclusions of Law* on hstoric waters filed with the Special Master by cover letter dated December 3, 1973, which read:

> "Before 1900, East Bay appears to have had such a configuraton that its entrance did not exceed 10 miles in width. Since at least 1918, the entrance of the Bay has been more than 10 niles wide. La.. Ex. 23." (U.S. suggested finding #8.)
>
> "Nevertheless, if one applies the 10-mile closing rule until 1953, and the Convention on the TerritorialSea and the Contiguous Zone thereafter, East Bay, if once a true inland bay, ceased to be a juridical bay ever since at least 1918. See the Chapman Line of 1950 which did not enclose East Bay." (Portion of U.S. suggested finding #9.)

B. The international and donestic principles of juridical bay delimitation recognized by the United States at the time during which East Bay, by admission, had the character of a juridical bay are summarized in the Award of the Tribunal in the *North Atlantic Coast Fisheries Arbitration*, decided September 7, 1910, and

incorporated into the subsequent treaty signed by the United States on July 20, 1912. (Scott, *The Hague Court Reports* (1916) pp. 142-225, see La. Exh. 283(10).)

(1) In case of bays the three marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay. (*Scott* at 224.)

On this point the tribunal commented:

> This interest [of the territorial sovereign] varies, speaking generally, in proportion to the penetration inland of the bay; but as no principle of international law recognizes any specified relation between the concavity of the bay and the requirements for control by the territorial sovereignty, this tribunal is unable to qualify by the application of any new principle its interpretation of the treaty of 1818. . . . (*Scott* at 183-84.)

(2) In every bay not hereinafter specifically provided for, the limits of exclusion shall be drawn three miles seaward from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed ten miles. (*Scott* at 224.)

Bays for which the limits of exclusion were specifically provided ranged in width from under ten geographic miles to over 17 geo-

graphic miles (Egmont Bay) at their entrances.

C. Prior to 1918, East Bay constituted a pronounced indentation of Louisiana's coast, having a mouth less than 10 geographic miles wide and exhibiting the configuration and characteristics of a bay. The configuration and characteristics are reflected by its pronounced penetration in proportion to the width of its mouth, as demonstrated by satisfaction of the semicircle test. (See tabular summary of uncontroverted data below from La. Exh. 23A and Figure 1; La. Exhs. 229, 230, 238, 241, and 240.)

Edition	Chart	Closing Line Length (Na.Mi.)	Bay Area Acres	Hypothetical Semi-circle (Ac)	Difference Acres
1839	Talcott	8.72	26,150	25,323	+827
1873	194	7.79	31,047	20,198	+10,849
1901	194	8.58	31,588	24,502	+7,086

2. From 1918 until the inception of litigation claims to East Bay in 1948, and after, East Bay qualified as a juridical bay under legal principles advocated by the United States in its international relations.

   A. East Bay had a more bay-like configuration and characteristics after 1918 than did Egmont Bay, on the coast of Prince Edward Island, which was held to be a juridical bay in the *North Atlantic Coast Fisheries Arbitration*. Figure 2 compares the configuration of

Egmont Bay as delimited in the Award of the Tribunal with that of East Bay (1918-1955) as claimed by Louisiana. (La. Exh. 23A; Exh. 283(10)—*Scott* at 224; *Louisiana Reply Brief*, Fig. 133A.)

B. The U.S. Treasury Department defined the territorial waters* of the United States in 1923 as follows:

> Sec. 1. The territorial waters of the United States comprise all waters over which the United States claims and exercises dominion and control as a sovereign power, including ports, harbors, bays and other enclosed arms of the sea along the coast of the United States and of the island and other possessions thereof, together with a marginal belt of the sea extending from low water mark outward a marine league, or three geographical miles, the seaward boundary thereof following a coast of land belonging to the United States; *bays, such as the Chesapeake Bay and the Delaware Bay, which except at their entrance, are so surrounded by the lands of the United States as to be reasonably regarded as geographically a part thereof, regardless of the distance between the opening headlands.* . . . (T.D.

*"Territorial waters" as used in this and subsequent legislative acts of the United States [Findings 2.C and 2.D] include both marginal sea and inland waters. La. Exh. 283(2), pp. 249-250, 262.

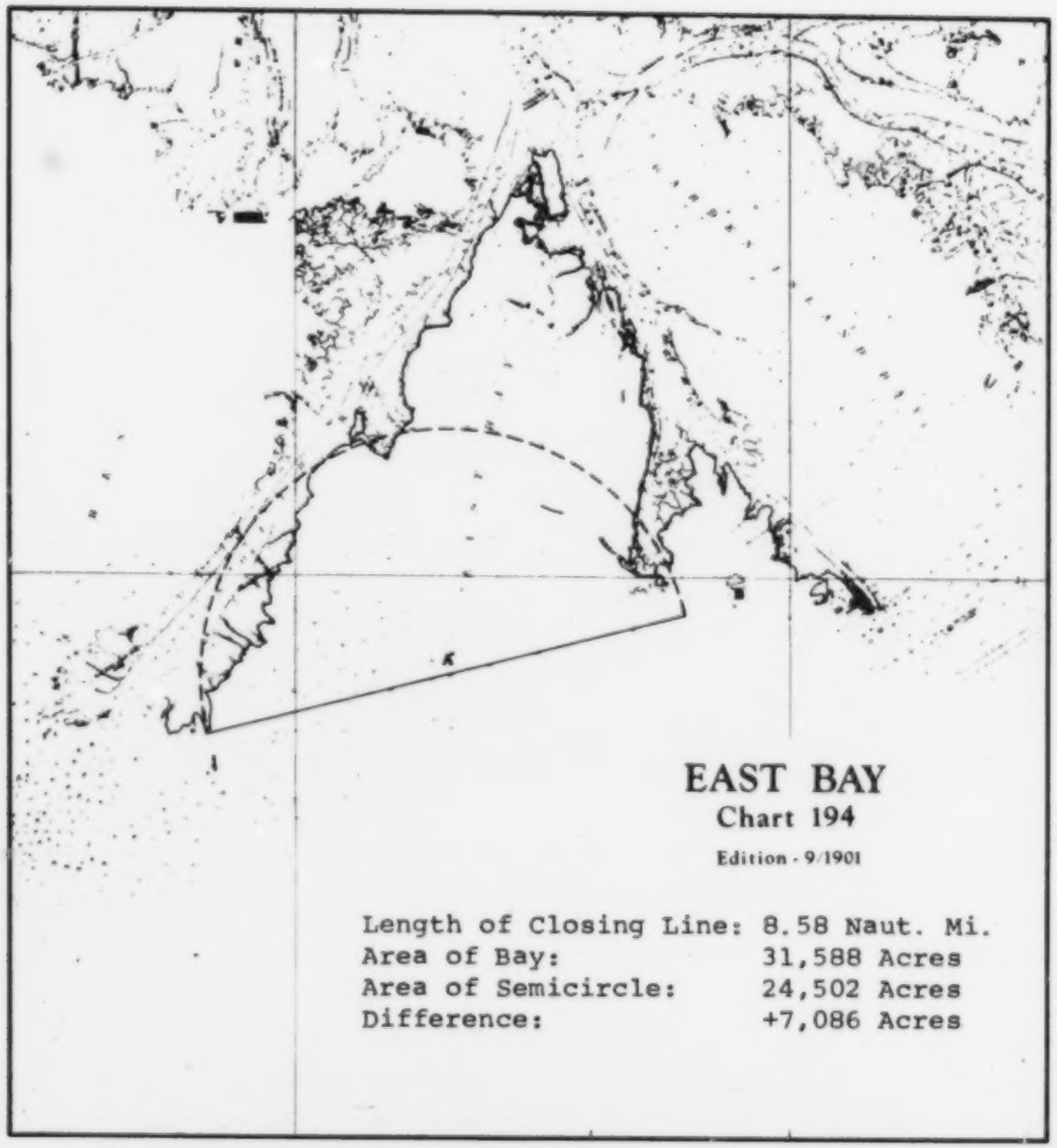


Figure 1. Juridical bay closure for East Bay on 9/1901 edition of Chart 194 (from La. Exh. 23A) showing satisfaction of the semicircle test with a bay closure less than 10 geographic miles long. This configuration prevailed on nautical charts until 1918. (La. Exhs. 22 and 23A.)

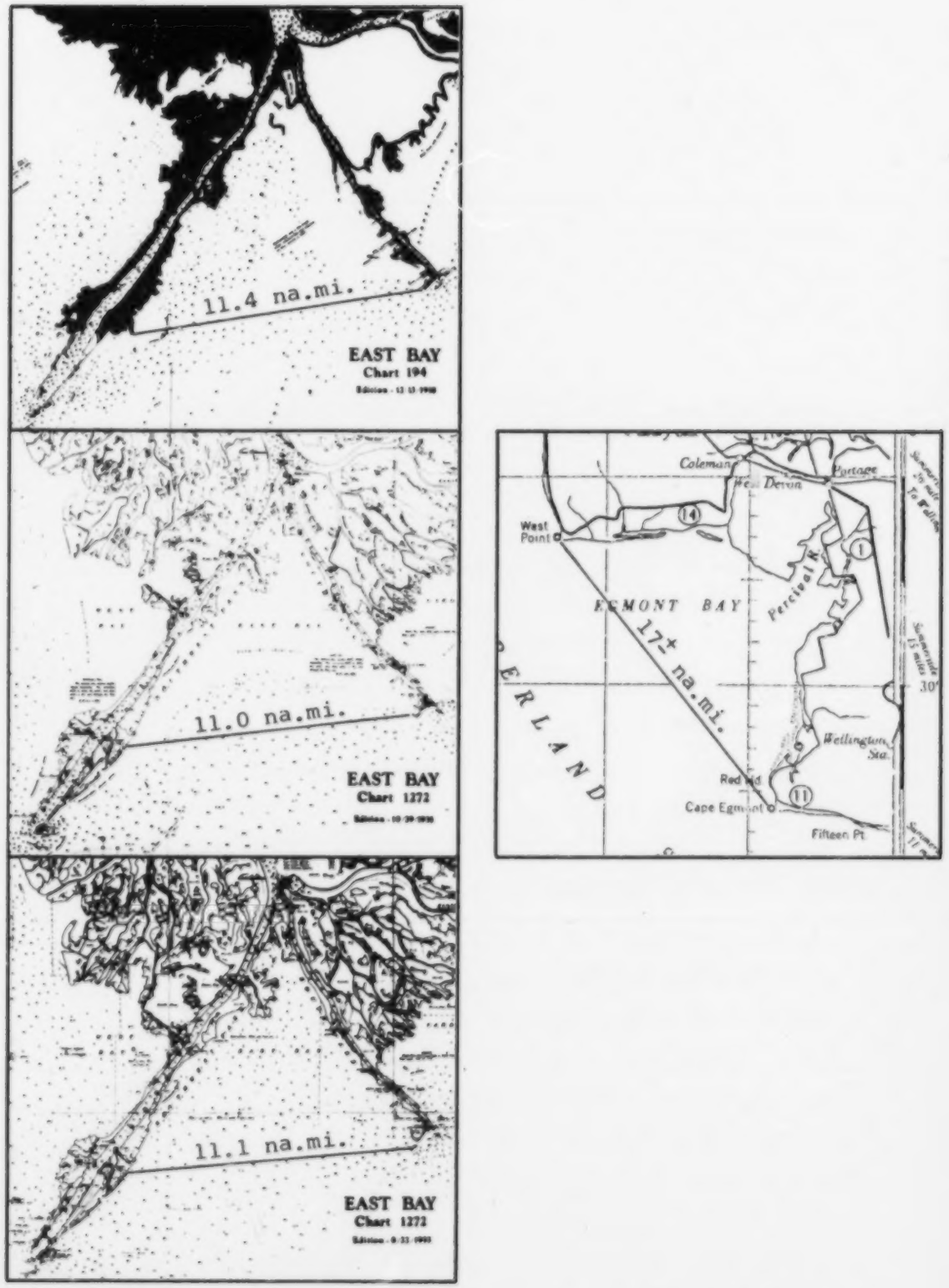


Figure 2. Comparison of East Bay from 1918 to 1955 with Egmont Bay. (See *Louisiana Reply Brief*, Figure 133A, for direct comparison of Egmont Bay with East Bay.)

Bulletin 3484 (June 2, 1923), La. Exh. 150, Tab 3, Admission No. 1, Exhibit 1 (c), emphasis added.)

C. In an order to the Coast Guard Fleet published on May 20, 1925, the Treasury Department delimited juridical bays as follows:

> "Where bays and estuaries are involved, which are not more than 20 miles in width —head-land to head-land—the 'coast' is determined by a straight line drawn from head-land to head-land and tangent to them. REGINA vs. CUNNINGHAM, Bell Crown Cases 72; DIRECT U.S. CABLE CO. vs. ANGLO-AM TEL. CO. (in the House of Lords) 2 App. Cases 349."

(Letter dated June 4, 1929, from Seymour Lowman, Assistant Secretary of the Treasury Department to the Secretary of State in response to a request concerning delimitation of U.S. territorial waters from the Norwegian Legation, La. Exh. 172.)

D. The United States similarly defined permissible bay closures for delimitation of the territorial sea of the United States for enforcement of the National Prohibition Act of 1927 (41 Stat. 305):

> . . .bays, such as Chesapeake Bay and Delaware Bay, which, at their entrances, are so surrounded by the lands of the United States as to be reasonably regarded as geographically a part thereof, regardless

> of the distance between the opening headlands. . . .

(La. Exh. 283(2), p. 250—an excerpt from Section 2201, Regulation 2, which was a revision of Internal Revenue Regulations No. 60.)

E. The Boggs's reduced area formula for ascertaining the juridical character of a waterbody, although proposed by the United States delegation to the 1930 Hague Conference on the Codification of International Law, has never received international recognition, either at the conference or in later codification attempts. However, the basic principle of the Boggs formula, the semicircle test of Article 7(3) of the Territorial Sea Convention, has received recognition. (*United States v. California*, (1965), 381 U.S. 139, 164, n. 27; La. Exh. 178, p. 41; La. Exh. 283(4), p. 151-152; U.S. Exhs. 74 and 93; 1 *Shalowitz* 36-40 and pp. 341-42 of Appendix C.)

F. The United States supported the 10-mile closing line for bays and the 10-mile fallback principle (Basis for Discussion No. 7) at the 1930 Hague Conference. However, international agreement on a limit for bay mouth size and fallback lines was not reached until adoption of the Convention on the Territorial Sea and the Contiguous Zone, which the United States Supreme Court has retroactively applied. *United States v. California*,

381 U.S. 139, 163-165 (1965). (U.S. Exh. 74, p. 198.)

G. The semicircle method generally, and not specifically the reduced area method as proposed by Boggs in 1930, has been used by various agencies of the Federal government at least since 1930, according to Aaron L. Shalowitz, Special Assistant to the Director of the U.S.C. & G.S. (1 *Shalowitz* 40-41; La. Exh. 178; also, see Finding 2.H, *infra.*)

H. The Census Bureau's delimitation of the outer limits of the United States in the official Sixteenth Census of 1940 represents a published attempt by an agency of the Federal government to delimit internal waters of the United States. This delimitation was based upon the principles described below (excerpted from La. Exh. 52(1), *Measurement of Geographic Area*), which were taken from the State Department's posture in international relations. No disclaimer of the effects of this delimitation is found in this officially published (Department of Commerce) document.

> A solution for the problem of setting outer limits for the United States was obtained by special adaptations, pertaining to embayments and islands, of the excellent principles established by S. W. Boggs, Geographer of the Department of State, in delimiting the territorial waters

> of the United States.[94] These adaptations of Boggs' principles resulted in the following rules for delimiting coastal and Great Lakes water,[95] and thereby, in part, for setting the outer water limits of the United States (fig. 8): (1) where the coast line is regular it shall be followed directly unless there are off-shore islands within ten nautical miles;[96] (2) where embayments occur having headlands of less than ten and more than one nautical mile in width, a straight line connecting the headlands shall set the limits;[97] however, (3) the coast line shall be followed if the indentation of the embayment is so shallow that its water area is less than the area of a semicircle drawn using the said straight line as a diameter;[98] and (4) two or more islands less than ten and more than one nautical mile from shore shall be connected by a straight line or lines, and other straight lines shall be drawn to the shore from the nearest point on each end island.[99]
>
> NOTE: East Bay is delimited as internal waters in this document by a line from the tip of Southwest Pass to the South Pass spit (La.

[94]Boggs, S.W., "Delimitation of the Territorial Sea, The Method of Delimitation Proposed by the Delegation of the United States at the Hague Conference for the Codification of International Law," *American Journal of International Law*, Vol. 24 (July, 1930), 541-555.

[95]Termed "State water" and not subdivided among adjoining counties or minor civil divisions.

[96-99]Footnotes omitted.

Exh. 52(1), p. 45, reproduced *infra* as Figure 8 at Finding 6.I.).

I. The international and domestic principles of juridical bay delimitation recognized prior to 1951 by the United States are outlined in a letter from James E. Webb of the State Department to J. Howard McGrath, Attorney General, dated November 13, 1951.

> (c) The determination of the base line in the case of a coast presenting deep indentations such as bays, gulfs, or estuaries has frequently given rise to controversies. The practice of states, nevertheless, indicates substantial agreement *with respect to bays, gulfs or estuaries no more than 10 miles wide: the base line of territorial waters is a straight line drawn across the opening of such indentations, or where such opening exceeds 10 miles in width at the first point therein where their width, does not exceed 10 miles.* (See Article 2 of the Convention between Great Britain, Belgium, Denmark, France, Germany and the Netherlands, for regulating the Police of the North Sea Fisheries, signed at The Hague, May 6, 1882, 73 *Foreign and British State Papers*, 39, 41; The North Atlantic Coast Fisheries Arbitration between the United States and Great Britain of September 7, 1910; *U.S. Foreign Rel.*, 1910 at 566; and the Research in International Law of the Harvard Law School, 23 American Journal of International Law, SS, 266.)

Subject to the special case of historical bays, *the United States supported the 10 mile rule at the Conference of 1930* (*Acts of Conference*, 197-199) and the Second Sub-Committee adopted the principle on which the United States relied (*Acts of Conference*, 217-218). It was understood by most delegations that, as a corollary to the adoption of this principle, a system would be evolved to assure that slight indentations would not be treated as bays (*Acts of Conference*, 218). The United States proposed a method to determine whether a particular indentation of the coast should be regarded as a bay to which the 10 mile rule would apply (*Acts of Conference*, 197-199.) *The Second Sub-Committee set forth the American proposal and a compromise proposal offered by the French delegation in its report, but gave no opinion regarding these systems (Acts of Conference*, 218-219). 1 *Shalowitz* 355; U.S. Exh. 93; emphasis added.)

It is apparent from the introductory sentences of section (C) of the letter that there was no concrete international law restricting the limit to 10 miles.

J. In the *Anglo-Norwegian Fisheries Case* decision dated December 10, 1951, the Interna-

tional Court of Justice rejected a contention that closing lines for bays or islands was limited to 10 miles. Thereafter, the United States referred to the 10-mile limit, which it had formally contended to be international law, as a "so-called ten-mile rule for bays" (see entire quote, *infra*, this finding). While advocating legislative adoption of a 10-mile limit for bays in the United Nations, after 1951 and prior to the 1958 Convention, the United States recognized that the ICJ had rejected the "so-called ten-mile rule for bays", and thereafter the United States honored greater bay limits, specifically the 24-mile limit after its adoption. These facts are evidenced by U.S. recognition of the Convention (as to honoring the Convention rule) and in a letter from Secretary of State Dean Rusk to Attorney General Robert F. Kennedy, dated January 15, 1963.

> Prior to the decision of the International Court of Justice in the *Anglo-Norwegian Fisheries* case rendered on December 10, 1951 the United States, as indicated above, followed the so-called ten-mile rule for bays, i.e., that under international law the closing line of bays could not exceed that limit. In a note verbale to the United Nations dated March 12, 1956, the United States took exception to a twenty-five mile proposal in the International Law Commission's 1955 draft code on the law of the sea and advocated instead maintaining the ten-mile rule for bays. Thus, during the 1951-1954 period, the United States either supported the 10-mile rule as international law or after the rejection of that rule by the International Court of Justice advocated its adoption by the United Nations. (U.S. Exh. 102.)

This finding is further substantiated by the Federal government's observations in suggested finding #9 of its *Suggested Findings of Fact and Conclusion of Law* concerning historic claims, p. 6.

> The evidence does not indicate that the United States adhered to a 10-mile closing rule before 1930, or that such a rule was settled in international law even as late as 1953. See *United States v. California*, 381 U.S. 139, 163-164; *Fisheries Case (United Kingdom v. Norway)*, I.C.J. Reports (1951) 116, 131.

K. Findings 1.B through 2.J above indicate that the United States' posture on juridical bay delimitation prior to the inception of the lawsuit in 1948 included the following five points:

(1) Bay closures were permissible regardless of distance between headlands, provided that the waterbodies were sufficiently

surrounded by the land as to be geographically considered a part thereof.

(2) Waterbodies less than 20 miles in width could be closed by baselines from headland to headland.

(3) As a minimum, a 10-mile bay closing line was permissible, and indentations that exceeded that limit could be delimited by a line at the first point within the bay which did not exceed 10 miles.

(4) In applying the above distance rules or for determining sufficiency of enclosure (in 1 above), slight indentations of the coast should be eliminated by application of the semicircle test.

(5) Waters landward of the baseline thus delimited were inland waters.

L. Under principles recognized by the United States prior to the inception of this lawsuit, East Bay was a geographically landlocked indentation, as evidenced by satisfaction of the semicircle test, with a mouth considerably less than 20 miles wide, and accordingly constituted a juridical bay as delimited on La. Exh. 23A (overlays for 1918 to 1956 editions of Chart 194/1272). Tabular data below (from La. Exh. 23A) is uncontroverted by the federal government.

Edition	Chart	Closing Line Length (Na.Mi.)	Bay Area Acres	Hypothetical Semicircle (Ac)	Difference Acres
1918	194	11.41	45,229	43,420	+1,809
1924	194	11.43	45,515	43,503	+2,012
1925 (2)	1272	11.35	45,576	42,921	+2,655
1925 (10)	1272	11.44	45,617	43,587	+2,030
1933	1272	11.22	44,332	41,931	+2,401
1934	1272	10.97	44,627	40,067	+4,560
1935	1272	11.00	41,434	40,307	+1,127
1944	1272	11.23	43,077	42,013	+1,064
1955	1272	11.07	42,189	40,872	+1,317

M. Should Findings 2.K.1 and 2.K.2 and 2.L be answered negatively, a 10-mile fallback line (under Finding 2.K.3) could be positioned within East Bay slightly landward from the closures indicated on La. Exh. 23A, because the bay met all requirements other than the 10-mile distance limitation. See Figure 3, *infra*.

3. Changes in the geographic configuration of East Bay and resulting changes in the juridical extent of that waterbody have resulted primarily from artificial modifications to the navigable channels bounding the bay by or under the direction of the U.S. Corps of Engineers.

A. Jettying of South Pass by James B. Eads in in 1875-78 artificially extended the mouth of that landform seaward over one geographic

mile to the southeast. See Figure 4, Area A. (La. Exh. 10, p. 67; La. Exh. 23A, 1901 edition; La. Exh. 177; testimony of Dr. Morgan, tr. 401-03.)

B. Grand Bayou, the natural levee of which constituted the eastern seaward periphery of East Bay in the 1800s and early 1900s, was closed by dams in 1876-1878 in conjunction with South Pass jetty construction. See Figure 4, Area B. (La. Exhs. 177 and 23A; Dr. Morgan, tr. 410.*)

C. Jettying at Southwest Pass, begun by the U.S. Corps of Engineers in 1902 and essentially completed in 1908, extended the mouth of that pass in a southwesterly direction more than three geographic miles. See Figure 4, Area C. (La. Exh. 10, p. 61; La. Exh. 23A, 1918 edition [also La. Exh. 159]; La. Exh. 170; Dr. Morgan, tr. 405.)

D. Numerous small channels entering East Bay from Southwest Pass were dammed in conjunction with the jettying project at that pass. (La. Exhs. 170, 272, 275, 273; Dr. Morgan, tr. 405-06, 417-18 and 6320.)

E. By the eary 1900s, sufficient accretion had occured at the South Pass western jetty to extend the natural levee landform to the end

*References to persons' testimony found in the transcript will be hereinafter cited in the form of "Dr. Morgan, tr. 410."

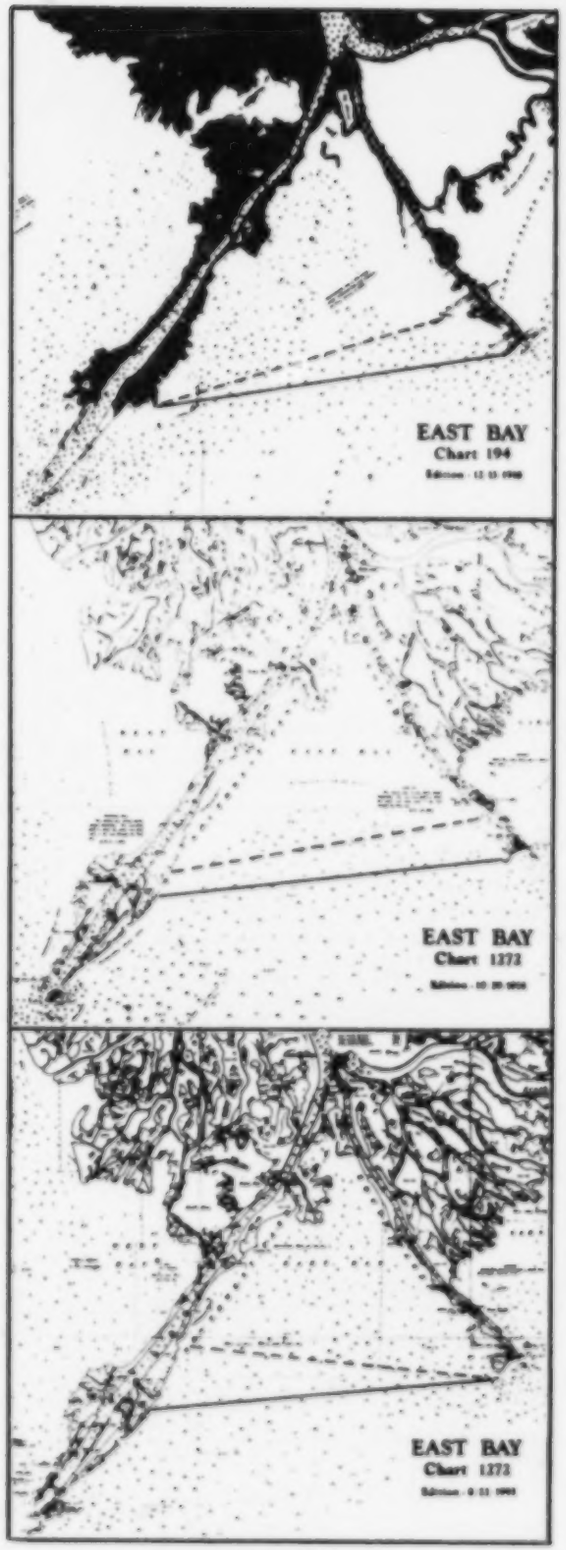
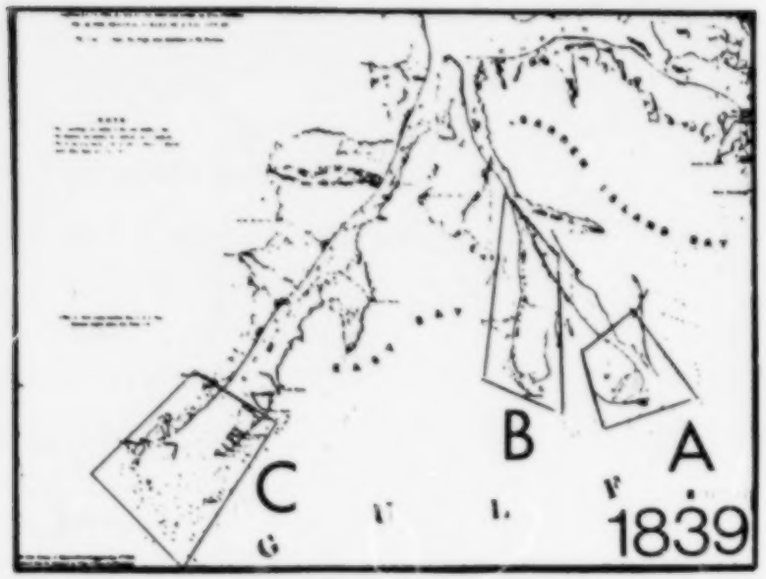


CHART 194 - 12/13/1918
Closing line = 11.41 naut. mi.
Bay area = 45,229 acres
Semicircle area = 43,420 acres
Difference = +1,809 acres

CHART 1272 - 10/29/1935
Closing line = 11.00 naut. mi.
Bay area = 41,434 acres
Semicircle ares = 40,307 acres
Difference = +1,127 acres

CHART 1272 - 8/22/1955
Closing line = 11.07 naut. mi.
Bay area = 42,189 acres
Semicircle area = 40,872 acres
Difference = +1,317 acres

Figure 3. Juridical extent of East Bay from 1918 until 1956 showing closures (solid) consistent with former domestic law (Finding 2.K.1, 2, & 4) and the Convention; also 10-mile fallback closures (dashed) unquestionably permitted in former domestic relations (Finding 2.K.3).



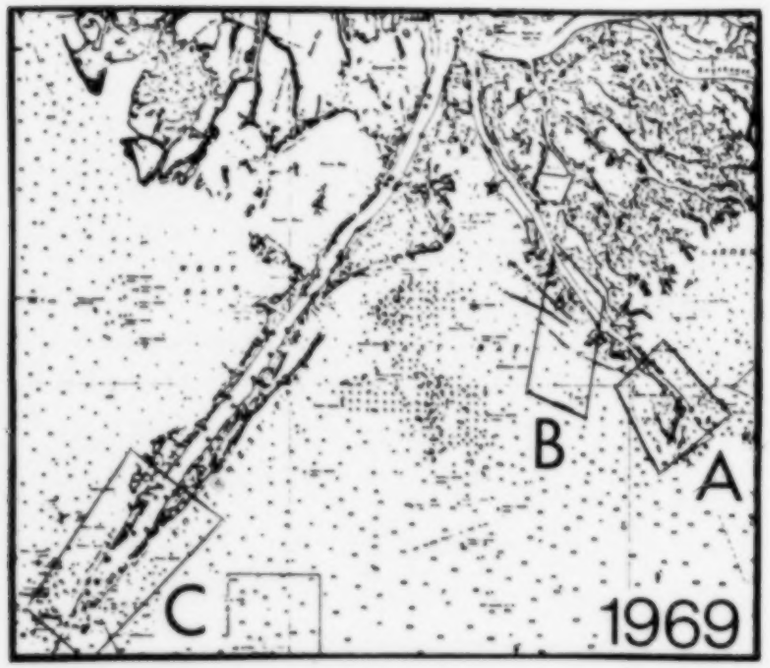


Figure 4. **Areas of major artificially caused change in the configuration of East Bay.**

of the jetty and to build a small westward trending sand spit at the terminus. (La. Exh. 6, p. 14, Figure 5 [See Figure 23 at Finding 25.A *infra* for reproduction]; La. Exh. 159.)

F. By 1918, the Grand Bayou landform had deteriorated to such an extent that only small levee remnants remained, thereby producing the expanded East Bay configuration. (La. Exh. 159; Dr. Morgan, tr. 410.)

G. Portions of East Bay claimed by the United States in this lawsuit as high seas over which neither government has territorial jurisdiction were formerly land above the high water datum and were patented and issued to private individuals in conformance with U.S. statutes. (La. Exhs. 93 and 94; *Louisiana Brief*, Vol. II, Part 1, Figure H-3 following page 84.)

H. The effect of jetty construction at both passes upon the juridical bay character of East Bay was to greatly extend the distance between outermost points on the headland landforms (closing line length) without enclosing a proportionately greater water area. Hence, the bay fails to meet semicircle test requirements at the outermost (jetty) points (if such points are found to be permissible "natural entrance points") after jetty construction. (La. Exh. 23A, compare pre-1918 and post-1918 editions.)

I. As a direct result of closing the small bayous opening into East Bay along Southwest Pass, the western natural entrance point of East Bay (as delimited on La. Exh. 23A) has significantly retreated, concurrently lengthening the closing line of the bay. See Figure 5 below. (La. Exh. 23A.)

J. Beginning in the 1930s, the Corps of Engineers cut channels through the western natural levee of South Pass, which had become quite narrow by that time, causing sedimentation along that landform. See Figure 6. This artificially created land in the bay reached its maximum extent at the time of the 1959 low-water survey and has been significant in reducing the bay area for semicircle test calculations. (La. Exh. 23A; La. Exhs. 328 and 329; Dr. Morgan, tr. 6324.)

4. The geographic and economic characteristics of

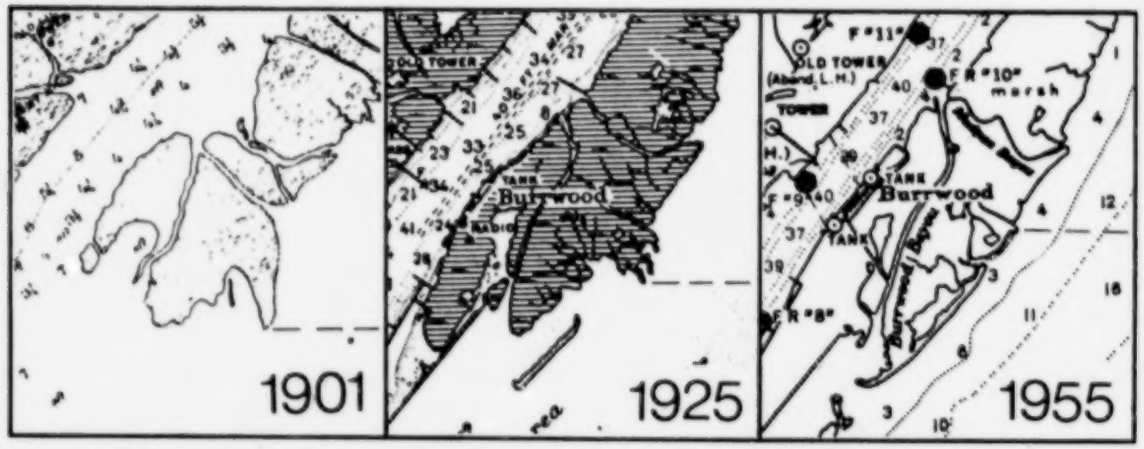


Figure 5. History of Southwest Pass headland landform morphology: 1901 to 1956 (from base maps in La. Exh. 23-A).

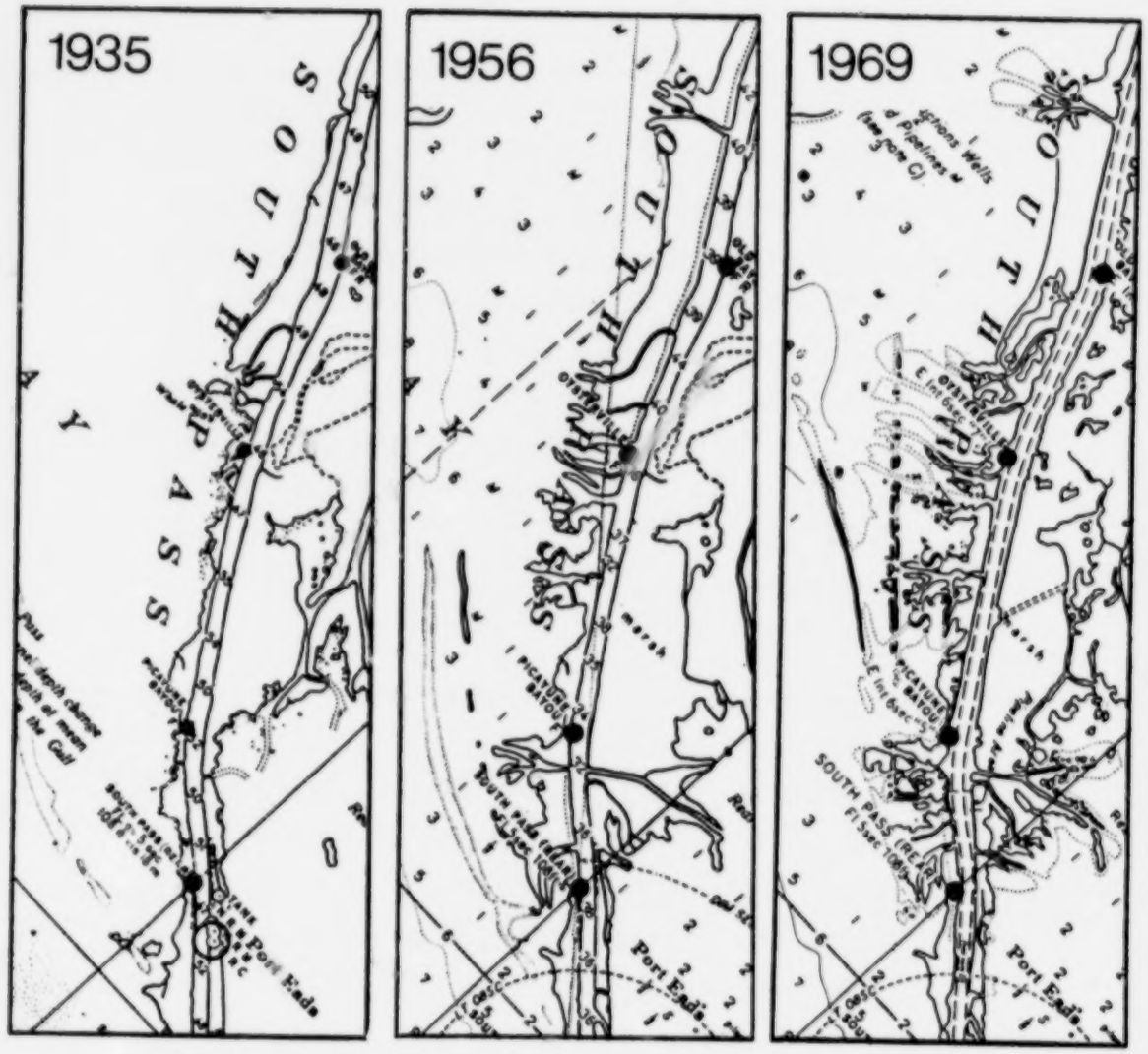


Figure 6. Comparison of South Pass portions of Chart 1272, edtions 1935, 1956, and 1969, showing progressive land building at sites of artificial cuts in the levee made by the U.S. Corps of Engineers. (La. Exhs. 164, 168, and 124.)

East Bay are such that it would have been unnatural had the inhabitants of its shores not exercised continuous sovereignty over its shores and

waters from the earliest times forward without any objection from foreign nations.

A. East Bay has exhibited a configuration and characteristics sufficiently bay like to have been considered a bay on charts and maps for nearly 200 years. The feature, although crudely portrayed, is designated "Bay of S. & S.W. Passes" on a January 1778 map of the delta (1968 *Louisiana Brief*, Exhibit 25, submitted in La. Exh. 21 in the Special Master proceedings) and is first referred to as "East Bay" on the Talcott Chart of 1838-39 (La. Exh. 23A). The bay is so designated on subsequent charts and maps, many of which have worldwide publication. (La. Exhs. 23A, 150, 180, 256, 258, 274, and 296.)

B. If the configuration of East Bay had become sufficiently un-bay like over its cartographic history to destroy its geographic character as a bay, the name would have been removed from the official charts under present charting practices of the U.S.C. & G.S.:

> A geographic name is applied to a particular feature which has identity. If the feature ceases to exist, the name becomes meaningless and is removed from the charts. 2 *Shalowitz* 321.

C. The waters of East Bay are completely surrounded by the lands of Louisiana, except for

the opening facing on the Gulf of Mexico. (La. Exh. 23.)

D. The numerous tributaries, natural channels, and artifidial cuts entering East Bay from South and Southwest Passes are entirely situated within the lands of Louisiana.

E. All of East Bay's waters have been and are such that they can be easily patrolled and protected by the governmental entity that has controlled its shores. (La. Exh. 8; Finding 5.P, *infra.*)

F. East Bay is well marked by headlands inside of which the mariner instinctively feels himself within the jurisdiction and dominion of Louisiana. (Deposition of Emanual Von Lubbe, La. Exh. 148, pp. 11-12; Deposition of Abraham Schouest, La. Exh. 147, pp. 10 & 16; Deposition of Christopher Dobard, La. Exh. 284, p. 83.)

G. The waters of East Bay are sufficiently enclosed to provide shelter for coastal craft. (Deposition of Abraham Schouest, La. Exh. 147, pp. 10 & 16.)

H. East Bay is not and has never been a waterway for intercourse between nations. (La. Exh. 8.)

I. Since the mid-1800s there have been settlements along East Bay's shores, including Port Eads on the east bank and Pilot Station on the

west bank of South Pass, Burrwood (and before that, Pilot's Lookout and Custom House) on the east bank of Southwest Pass, and Pilottown near the head of the two passes. Additionally, the Coast Guard has maintained stations at the mouths of both passes. (Dr. Morgan, tr. 193-94; La. Exhs. 8, 159, and 169.)

J. From the beginning of recorded history, the inhabitants of East Bay's shores have had vital economic interests in the bay, including protecting the mouths of the Mississippi for navigational purposes, protecting oyster fishing within the bay, protecting shrimping within the bay, protecting water fowl (including terns and all other species of birds) and game within the bay, preventing pollution, and exploring for and developing oil and gas resources. These activities commenced long before the Truman Proclamation of 1945 and have continued to date. See Findings 5 and 6, *infra*.

K. If the State of Louisiana had not controlled oyster fishing, shrimping, and other marine life exploitation carried on in East Bay, there would have been disastrous effects upon the biologic resources in East Bay. (J. Y. Christmas, tr. 1129-1131.)

5. Louisiana has claimed and exercised jurisdiction and sovereignty over East Bay as an inland

waterbody since entering into the Union in 1812.

A. East Bay was a navigable waterbody constituting a juridical bay in 1812 when Louisiana entered the Union, as determined from its characteristics on the 1839 Talcott chart, the first accurate cartographic portrayal of the area. (Dr. Morgan, tr. 363-364; La. Exh. 23A.)

B. Sovereignty over coastal bays in Louisiana including East Bay, was established in the State of Louisiana in 1812 by virtue of the nature of the union, after having been under the sovereignty of France, Spain and the United States (as a territory). While the United States retained all public lands except waterbottoms, title to the waterbottoms of rivers, bays, and other navigable inland waterbodies passed to Louisiana on its admission in 1812. (See Finding 6.G, *infra*.)

C. The doctrine recognizing state ownership of waterbottoms underlying inland navigable waters in *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212 (1845), is applicable to East Bay under Finding 5.A, *supra*. (*United States v. Louisiana, et al.*, 363 U.S. 1, 66, n. 108 (1960).)

D. As early as 1870 Louisiana enacted legislation (Act 18 of 1870) to regulate oyster fishing in its coastal bays. Later statutes (including Act 106 of 1886, Act 110 of 1892, Act 153 of 1902 and Act 52 of 1904) specifically asserted

ownership of the coastal waterbodies as well as the biologic resources growing on their beds. (La. Exhs. 55, tabs 1, 2, 3, 5 and 6.)

E. In 1902 the Louisiana Legislature enacted Act 52, which specifically provided:

> [T]hat all of the beds of the rivers, bayous, creeks, lagoons, lakes, bays, coves, sounds and inlets bordering on or connecting with the Gulf of Mexico, and all that part of the Gulf of Mexico within the jurisdiction of the State of Louisiana shall be, continue, and remain the property of the State of Louisiana.... (La. Exh. 55(5).)

F. During the period 1903-1918, some 58 oyster leases were granted in the shallow waters of East Bay. While the leases covered areas within three miles of the shore, the maps attached to the leases designating their extent showed East Bay to be a bay. [The Federal government admits that the waterbody qualified as a juridical bay at that time—See Finding 1, *supra.*]

G. At the time Louisiana asserted title over all bays bordering on or connected with the Gulf of Mexico (Findings 5.D & 5.E, *supra*), East Bay was clearly designated as a bay on maps of the State of Louisiana and of the United States, many of which had worldwide circulation. (La. Exhs. 23A, edition 9/1901, and 256.)

H. In 1902 East Bay was a juridical bay as recognized by the United States' admission (Finding 1, *supra.*)

I. By Act 189 of 1910, Louisiana again asserted its title to the beds and bottoms of rivers, bayous, lagoons, lakes, bays, sounds, and inlets bordering on or connected with the Gulf of Mexico. (La. Exh. 55(8).)

J. East Bay was a juridical bay in 1910 when the above statute (Finding 5.I) was enacted. (Finding 1, *supra.*)

K. Act 245 of 1910 made it unlawful, except with a license, to seine for shrimp in any waters of the State of Louisiana. (La. Exh. 55(168).)

L. Act 103 of 1926 declared the State to have ownership of all saltwater shrimp existing in the waters of the State of Louisiana, which waters were defined to include all bays and sounds along the Louisiana coast. (La. Exh. 55(173).)

M. Act 51 of June 18, 1948, enacted prior to the inception of the 1948 lawsuit, specifically recognized East Bay as "inside" waters of the State to which open and closed shrimping seasons and other regulations were applicable. (La. Exh. 55(179).)

N. In contrast to the Florida statute, dealt with in *Skiriotes v. Florida*, 313 U.S. 69 (1941), which was construed as an exercise of au-

thority over United States nationals fishing in international waters, Louisiana's various oyster and shrimping statutes dealt with waters over which Louisiana had jurisdiction and were asserted against all persons, citizens and aliens alike. (See Findings 5.0-U relating to enforcement of the Louisiana acts.)

O. Enforcement agents of the Refuge Division of the Louisiana Wild Life and Fisheries Commission, working from a base camp established in Garden Island Bay in 1911, enforced laws to protect quadrupeds, water fowl and other wildlife in the Pass a Loutre Waterfowl Management area, including the entirety of East Bay, prior to passage of the Migratory Bird Treaty Act of 1918. (Alan Ensminger, tr. 771-776.)

P. Enforcement agents of the Wild Life and Fisheries Commission and its predecessor agency, the Department of Conservation, have, at least since 1918, continuously patrolled the waters of East Bay within an imaginary line drawn between the South Pass mudlumps to the Southwest Pass jetties and three miles seaward of that line in enforcing Louisiana's fishing and shrimping statutes. (Deposition of Captain Emanuel Von Lubbe, La. Exh. 148, p. 11; deposition of Captain Abraham Schouest, La. Exh. 147, pp. 11, 13; deposition of Samuel J. Nunez, La. Exh. 145, pp. 7-10; testimony of Joseph Billiot, tr. 820-823.)

Q. In patrolling Louisiana's coastal inland waters enforcement agents of the Conservation Department and the Wild Life and Fisheries Commission have used armed vessels or have themselves been armed and have used armed force to arrest violators of Louisiana's laws. (Deposition of Samuel Nunez, La. Exh. 145, p. 6; Deposition of Captain Abraham Schouest, La. Exh. 147, pp. 6-7.)

R. Both United States citizens and foreign nationals, including Japanese, Chinese, Filipino, Mexican, and Spanish fishermen, have been required to obtain Louisiana licenses to fish in East Bay and other Louisiana waters. (Deposition of Captain Von Lubbe, La. Exh. 148, pp. 23-26; deposition of Samuel J. Nunez, La. Exh. 145, p. 14-15; deposition of Captain Abraham Shouest, La. Exh. 147, p. 12-14.)

S. Licenses of fishermen fishing in East Bay have been checked by Wild Life and Fisheries enforcement personnel without regard to nationality. (Deposition of Samuel Nunez, La. Exh. 145, pp. 14-15; deposition of Captain Von Lubbe, La. Exh. 148, pp. 24-25.)

T. Regardless of nationality, persons caught fishing without a license within East Bay or three miles seaward from the mouth of the bay have been arrested and have had charges filed against them by Louisiana enforcement officers. (Deposition of Samuel Nunez, La. Exh.

145, pp. 14-16; Mr. Billiot, tr. 821-25; deposition of Captain Von Lubbe, La. Exh. 148, p. 15.)

U. Mr. Joseph Billiot, an aerial law enforcement agent for the Wild Life and Fisheries Commission, arrested three Mexican fishing vessels in or about 1946 for violating the closed shrimping season in East Bay. These arrests were made outside of a 3-mile belt from the shore and inside the East Bay closure claimed by Louisiana. See Figure 7. (Mr. Billiot, tr. 824-25; La. Exh. 8.)

V. Louisiana enacted Act 68 of 1932, Act 367 of 1940, Act 385 of 1948, and Act 386 of 1948 to prevent pollution of State waters. (La. Exh. 59, tabs 1 through 4.)

W. Enforcement agents of the Wild Life and Fisheries Commission have conducted pollution control activities in East Bay consistent with Louisiana pollution control statutes and have issued citations for failure to comply with these regulations. (Jack Hood, tr. 1270, *et seq.*)

X. Louisiana commenced mineral leasing in East Bay on February 20, 1928 by awarding State Mineral Lease 192 to E. C. Andrus on that date, which lease specifically named East Bay. This remains an active lease in which numerous agreements were entered into between the lessee and subsequent transferees, selec-

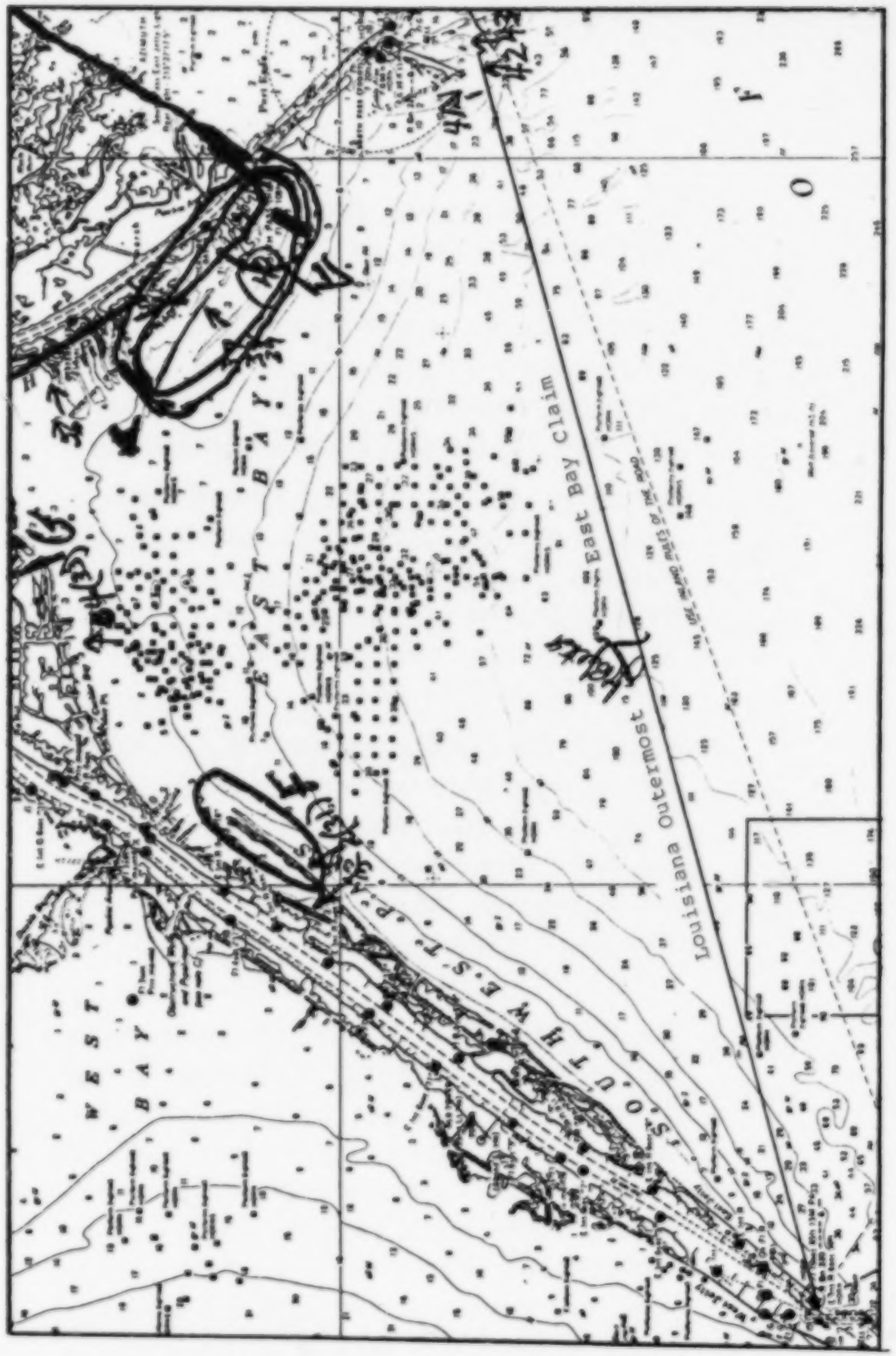


Figure 7. Reduced portion of La. Exh. 8 upon which Mr. Joseph Billiot designated the approximate location of his arrest of three Mexican vessels. Superimposed is Louisiana's outermost East Bay claim.

tions were made and filed, Division Orders were signed and filed, and royalties were paid. All of these acts are on file with the State Land Office. As partial releases were obtained other leases were given; parts of the original Lease 192 area are still subject to that lease. (La. Exh. 92; Mr. Ory Poret, tr. 1497, *et seq.*)

Y. Subsequent to the Truman Proclamation of 1945, Louisiana issued twenty leases covering virtually all of East Bay. Louisiana continued leasing the bed of East Bay until enjoined by the Supreme Court in 1956. (La. Exh. 58, tabs 35-54; La. Exh. 95.)

Z. Although the leasing in East Bay involved various administrative and regulatory activities, the record of which was public, none of the leases were ever challenged by the United States prior to the declaration of the 1945 Truman Proclamation. (See Finding 5.AA, *infra.*)

AA. The Continental Shelf doctrine originated in 1945 with the proclamation of President Harry S. Truman and only later matured into international law. Consequently, exclusive acts of jurisdiction pertaining to exploitations of the sea bed, (such as exclusive mineral leasing or oyster leasing prior to the Truman Proclamation) cannot reasonably be explained as having no territorial import because of the Continental Shelf doctrine.

6. Louisiana's claim to East Bay has never been disputed or questioned by foreign governments, nor was the claim disputed by the United States government until the inception of the lawsuit in 1948. To the contrary, all evidence indicates that both foreign governments and the Federal government acquiesced in Louisiana's claim.

A. The Inland Water Line, established under Congressional Act of 1895, has designated East Bay as inland waters, at least for purposes of navigation regulation, since 1895. (La. Exh. 98.)

B. On August 8, 1907, the United States, by Executive Order of President Theodore Roosevelt, created the Tern Islands Reservation, which included the entirety of East Bay. This reservation was set aside as a preserve and a breeding ground for native birds prior to any migratory bird treaty. (La. Exh. 28, tabs 1, 4, 5, and 6.)

C. The Tern Islands Reservation was designated on many maps of general circulation. (La. Exhs. 256D, 258, and 270.)

D. This area was patrolled by Louisiana, under authority of the United States, to protect birds. (La. Exh. 28(2); Mr. Ensminger, tr. 776.)

E. Dr. George H. Lowery, Jr., an internationally known ornithologist, testified that the designation of the small islands without control

over the surrounding water would have been ineffective and that he interpreted the Proclamation as including the islands and surrounding waters, which included East Bay. (La. Exh. 30, Dr. Lowery, tr. 692-99; Implementation of Migratory Bird Treaty in 1918, 40 Stat. 755.)

F. Representatives of the United States, in interpreting a similar proclamation for a reservation at Shell Keys, recognized that the birds in the reservation would not tolerate disturbance in the surrounding water areas. (La. Exh. 28(27), a memo by Warren S. Bourn, a biologist with the U.S. Interior Department, dated October 17, 1956; 45 Stat. 1222; 43 Stat. 98; Louisiana Act 52 of 1921; Dr. Lowery, tr. 702-06 and 742-44.)

G. The United States, in response to Louisiana's Request for Admission, stated:

> The United States is not aware that any foreign power has attempted to assert any jurisdiction over the deltaic area within the broken lines shown on the plat attached to the Proclamation of August 8, 1907 [which included East Bay], creating the Tern Islands Reservation, since that date, or indeed, since the effective date of the Louisiana Purchase of 1803. Earlier, jurisdiction over the portions of the mainland lying within the area encompassed by that line was as-

> serted by France from April 9, 1682, to November 3, 1762, by Spain from November 3, 1762, to October 1, 1800, and by France from October 1, 1800, to April 30, 1803, to the extent that the mainland extended into that area at those times. The United States is not able categorically to admit or deny the matter requested to be admitted, because it has not undertaken the historical research that would be necessary to enable it to do so. (Insert ours. La. Exh. 150.)

During the pendency of the Special Master proceedings the United States, having had sufficient time to undertake the research necessary to categorically deny the matter, has made no further statement on this point.

H. In its Request for Admissions, Louisiana asked:

> Is it not a fact that no foreign power has questioned the rights asserted by the President of the United States over the area referred to in Admission No. 1?

And in response, the United States said:

> No foreign power has questioned the right of the President of the United States to designate as a bird reservation the islands lying within the area referred to in Request for Admission No. 1. (La. Exh. 150, tab 2, p. 2.)

I. The United States Department of Commerce

Census Bureau, in a 1937 delimitation of the outer limits of the United States territory made in conjunction with the 1940 Census, delimited the entirety of East Bay as internal, or State, waters from the terminus of South Pass to the tip of the Southwest Pass jetties. See Figure 8 below. (La. Exh. 52(1).)

J. The Census Bureau delimitation, made in accordance with juridical bay rules advocated or utilized by the State Department in its international relations, represents a comprehen-

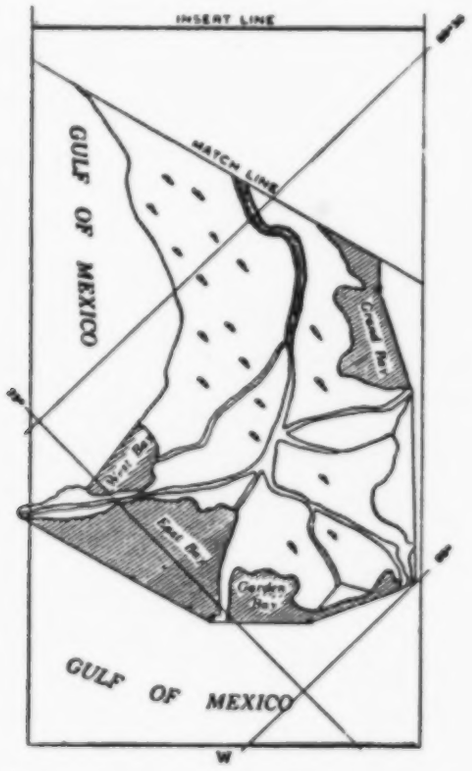


Figure 8. Portion of Plate VIII from *Measurement of Geographic Area*, p. 45 (La. Exh. 52(1).)

sive, unbiased delimitation of the internal waters along Louisiana's coast at an unsuspicious time for objective reasons prior to the inception of the 1948 lawsuit. (See finding 2.H *supra*; La. Exh. 52(1).)

K. The Census Bureau delimitation was published in 1946, just two years prior to the inception of the 1948 lawsuit. (La. Exh. 52(1).)

L. Unlike other delimitations of the United States jurisdictional limits that contained disclaimers (*e.g.*, Tariff Commission study and U.S. Exh. 416D), the Census Bureau's delimitation was not disclaimed for *any* purpose in the official publication of the study. (La. Exh. 52(1).)

M. *Measurement of Geographic Area*, the publication in which the 1937 Census Bureau delimitation is discussed and illustrated, was published by an official agency of the United States government—the Department of Commerce, is a public document, and as such, may be assumed to have a general and non-restricted worldwide distribution. (La. Exh. 52(1).)

N. The internal waters delimitations incorporated in the 1940 Census remeasurement and the underlying delimitation principles were reviewed and used to measure the limits of the United States by the Census Bureau in 1967. (La. Exh. 52(2).)

O. The United States has offered no evidence of

any protest by foreign governments to the United States delimitation of East Bay as internal waters, nor has it offered any records of adverse claims to East Bay by foreign nations.

P. The continuous patrolling of East Bay and enforcement by Louisiana agents of regulations throughout all of East Bay was open, apparent, and visible to all—United States nationals and foreigners alike—who may have taken occasion to examine the conditions existing in East Bay. (La. Exhs. 145, 147 and 148; Joseph Billiot, tr. 817, et seq.; See Findings 5.0-U, *supra.*)

Q. The right of Louisiana to exclude foreign fishing vessels if they did not obtain Louisiana licenses to fish in East Bay has not been questioned or protested by the nationals or the governments of the United States, China, Japan, the Phillipines, Spain, Mexico, or any other country or state. (Deposition of Samuel Nunez, La. Exh. 145, p. 15; Deposition of Capt. Von Lubbe, La. Exh. 148, pp. 24-25; See also Findings 5.O-U, *supra.*)

R. Japanese and Chinese, as well as other foreign nationals, obeyed Louisiana's exclusionary shrimping and fishing laws. (Deposition of Capt. Von Lubbe, La. Exh. 148, pp. 26-27.)

S. Regarding Joseph Billiot's arrest and detention of three Mexican fishing vessels around 1946

for entering Louisiana's waters (See Finding 5.T *supra*), no evidence has been located and placed into the record of this case that the Mexican government ever protested Louisiana's actions.

T. No evidence has been located and placed into the record of this case that Japan or any other foreign government has ever protested the enforcement of Louisiana laws excluding their nationals or requiring licenses.

U. The Captain of the Port of New Orleans asserts jurisdiction over East Bay as a representative of the United States Coast Guard. (33 CFR, subpart 3.40-75, La. Exh. 53.)

V. The probative value of navigational regulation in establishing historic title is affected by the fact that foreign vessels may often be subjected to navigational regulation extra-territorially or while exercising the right of innocent passage in the territorial sea. Geographical sovereignty as the basis of the claim is unclear in such a case. Therefore, for historic title purposes, navigational regulation is to be distinguished from other jurisdictional activity, which clearly evidences a claim of geographic sovereignty but which may be done in both inland waters and in the territorial sea.

W. Assertions of sovereignty which have been construed as ineffective to establish historic

inland waters claims involved facts where the waters were used as routes for international traffic, or involved explicit declarations clearly evidencing a limited intent. See *United States v. California*, 381 U.S. 139, rejecting the historic inland claim for the Santa Barbara channel and discussing its importance for international traffic; *Louisiana Boundary Case*, 394 U.S. 11, discussion of historic Coast Guard Line claim; and U.S. Exh. 99, p. 66.

7. Disclaimers of the Federal government are ineffective in defeating Louisiana's historic claims at East Bay, as all such disclaimers have arisen since the inception of the 1948 lawsuit.

A. No evidence in the record of this case indicates that the United States disclaimed ownership of East Bay or any portion of that waterbody prior to the inception of the lawsuit in 1948. (*Suggested Findings of Fact and Conclusions of Law by the United States*, submitted by cover letter dated December 3, 1973 to the Special Master, Finding #6, pp. 4-5; and U.S. Exh. 108.)

B. The Census Bureau delimitation of East Bay made in 1937 for the 1940 Census and published in 1946, is definitive evidence in the record of this case showing the United States position regarding the internal waters delimitation of that waterbody prior to the inception

of this litigation. The closure indicated (see Figure 8, *supra*) is exactly that claimed by Louisiana in this proceeding. (La. Exh. 18, Sheet 3; La. Exh. 52(1).)

C. Regarding the set of maps prepared by the Law of the Sea Baseline Committee and published in April 1971 (U.S. Exh. 416D), U.S. District Judge James von der Heydt held in the Alaska proceeding in his Findings of Fact and Conclusions of Law at p. 24:

> 107. The charts depicted by Exhibit 73 [U.S. Exh. 416D in this proceeding] were drafted by the Law of the Sea Baseline Committee at a time when this case was pending in this court. Among the members of that committee at the time was the principal attorney for the United States in this litigation. Said exhibit cannot be said to be an unbiased product. (Hodgson's depos., pp. 10-15; Exhibits HY, HX, IB, IC, IC-1.) (*United States v. Alaska*, Civil No. A 45-67.)

D. In the same Findings of Fact and Conclusions of Law referred to in 7.C supra, disclaimers similar to those offered by the United States in this proceeding (U.S. Exhs. 108 and 114) were described as "hastily prepared, based on questionable research, and offered in a self-serving effort by the federal government to have the Court disregard historic facts." (*United States v. Alaska*, Civil No. A-45-67,

p. 23 of Findings of Fact and Conclusions of Law, Finding #103(b).)

Other Mississippi Delta Bays

8. The waterbodies enclosed by distributaries of the Mississippi River delta and adjacent deltaic landforms have had configurations prior to the inception of this lawsuit sufficiently bay like to warrant their treatment as juridical bays by closing their entrances with straight baselines.

   A. At the time of the first accurate surveys in the Mississippi delta (c. 1840), all indentations lying between and adjacent to distributaries of the Mississippi River delta exhibited bay-like configurations in which average penetration inland appears to be at least half the width of their mouths, as ascertained by the semicircular method. (See Figure 9, La. Exh. 151; also La. Exh. 23A, Talcott Chart of 1839.)

   B. All major interdistributary indentations in the delta have been at least partially filled by subdeltaic sedimentation resulting from crevasses in the Mississippi River natural levees. (Dr. Morgan, tr. 115-27; La. Exh. 4, pp. 117-19, Figures 3-6; La. Exh. 5, Figures 6-8—Figure 7 is reproduced *infra* as Figure 10; La. Exh. 7, GP-17, GP-21-29.)

   C. Land construction within the bays, although emphasizing the inland nature of the waterbodies, has sufficiently reduced the water area within certain bays so that the semicircle test

Figure 9. Mississippi River Commission map of the Alluvial Valley, Mississippi delta portion, published in 1887 and based upon surveys from 1838-1887, demonstrates the bay character of all interdistributary indentations at that time. (Note: conservative delimitation techniques have been utilized so that visual comparisons will clearly demonstrate satisfaction of semicircle test.)

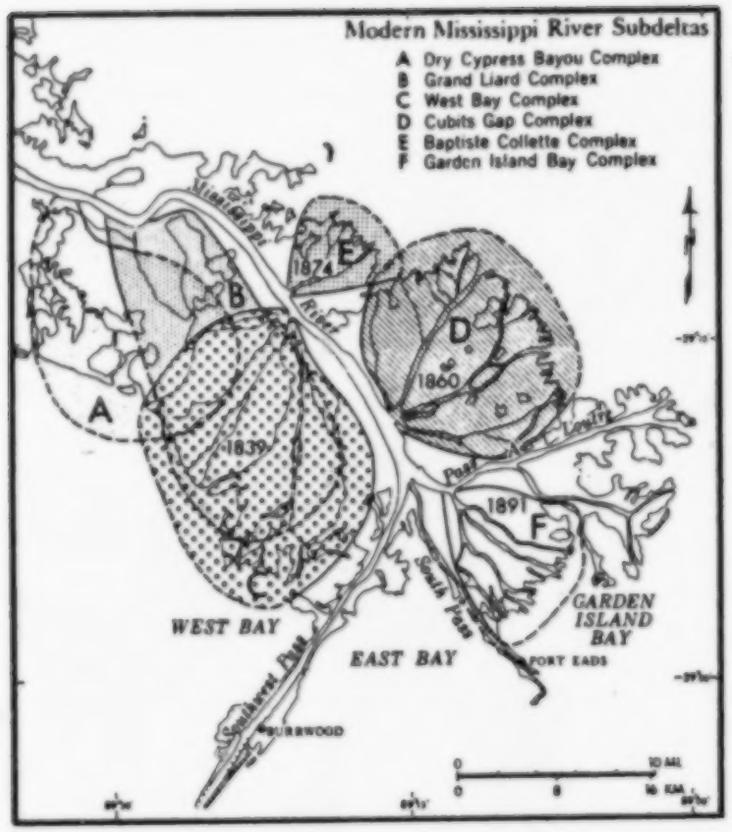


Figure 10. The subdeltas of the modern Mississippi River; dates are for initial crevasse. (From Morgan, La. Exh. 5, Figure 7.)

is not met using former geographic headlands and conservative methods of area measurement which exclude tributaries. (See *e.g.*, the effects of Joseph Bayou sedimentation and sedimentation along artificial cuts through the South Pass levee upon semicircle test calculations at East Bay (La. Exh. 23A).)

D. Subdelta sedimentation within the interdistributary bays exhibits a growth cycle composed

of several stages: initial crevasse, rapid subdelta growth, abandonment, deterioration of the subdeltaic deposit, and final reversion to an estuarine embayment. Modern subdeltas within the delta are in the terminal portions of this cycle. (La. Exhs. 4 & 5; Dr. Morgan, tr. 136-145.)

E. Assuming that the natural entrance points of the bays remain in the same approximate positions, complete deterioration of the subdeltaic deposits should result in the waterbodies once again regaining their juridical bay status.

F. Even in the present state of moderate deterioration, the Supreme Court has held that:

> [A]11 of the areas of the Mississippi River Delta which Louisiana claims to be historic inland waters are indentations sufficiently resembling bays that they would clearly qualify under Article 7(6) if historic title can be proved. 394 U.S. 11, 75 n. 100.

G. If the configuration of the delta bays had become sufficiently un-bay like over their cartographic history to destroy their geographic character as bays, the names would have been removed from the official charts under present charting practices of the U.S.C. & G.S.:

> A geographic name is applied to a particular feature which has identity. If the feature ceases to exist, the name becomes

meaningless and is removed from the charts. 2 *Shalowitz* 321.

(See La. Exhs. 21 [Sheet 26], 169, 158, 122, 170, 275, 273, 272, 159, 160, 161, 269, 162-168, 8, 277, 124, and 293 for continued use of bay nomenclature on official charts of the delta.)

9. Mudlump islands, because of their close proximity to the mouths of the major passes, which bound the interdistributary bays, and because of their pronounced and readily identifiable character, have been recognized as natural appendages of the delta coast from which Louisiana's political coastline is to be measured.

A. The most pronounced elevations in the Mississippi delta are mudlump islands which form at and lie in close proximity to the major distributary mouths. (Dr. Morgan, tr. 292-321, 350-51; La. Exhs. 6, 10, 11, 12, and 340; deposition of Samuel Nunez, La. Exh. 145, p. 9.)

B. Mudlump islands in the delta have been utilized since earliest times as prominent markers for navigators. Many of these features were secondarily marked with stakes or flags in early days and today are carefully surveyed and noted on nautical charts. (Dr. Morgan, tr. 242; deposition of Samuel Nunez, La. Exh. 145, p. 9; deposition of Captain Von Lubbe, La. Exh. 148, pp. 12-13; La. Exh. 21 (Sheet

26)—Talcott Chart, see also *Louisiana Brief*, Vol. V, Part 4, Figure D-13 following p. 17.)

C. In the case of *The Anna*, 5 C. Rob. 373, 385C (1805), it was held that mudlumps constitute natural appendages of the coast:

> But it so happens in this case, that a question arises as to what is to be deemed the shore, since there are a number of little mud islands composed of earth and trees drifted down by the river, which form a kind of portico to the mainland.... [T]he protection of territory is to be reckoned from these [mudlump] islands; . . . they are the natural appendages of the coast on which they border, and from which, indeed, they are formed.

(La. Exh. 25.)

D. A line connecting outermost mudlumps at the mouths of the Mississippi River follows the general trend of the delta coast. (La. Exh. 8; La. Exh. 98; Figure 9, *supra.*)

E. In the Alaskan Boundary Arbitration of 1904, U.S. counsel Hannis Taylor stated that the political coastline of the Mississippi delta is to be measured from outermost mudlumps. This statement followed and was in the general context of a discussion about political coastlines connecting outermost points along the coast of Maine and along Cuban archipelagos.

> [W]e had a great English authority in the Case of the "Anna," an Admiralty opinion pronounced by Lord Stowell (Rob. Adm., 373), in which the question arose at the mouth of the Mississippi River, whether the mud islands which are formed away out in the Gulf—whether that is the outside line of the State of Louisiana. Lord Stowell in that notable case, a case of capture during war, held that you had to go to the uttermost limit of these mudbanks in order to find the point from which to measure the political coastline. (6 *Proceedings of the Alaskan Boundary Tribunal*, 5 (1904) Sen. Doc. No. 162, 58th Congress 2d Session, 606-608—La. Exh. 356-G.)

F. The maps used in the *Louisiana v. Mississippi* opinion of the Supreme Court, 202 U.S. 1 (1906), if interpreted in light of the United States position regarding the political coastline of the Mississippi delta in the 1904 Alaskan Boundary Arbitration (Finding 9.E, *supra*), may reasonably be interpreted as inferring an offshore boundary based upon straight baseline closures between outermost points of the delta.

10. The geographic and economic characteristics of all Mississippi delta bays are such that it would have been unnatural had the inhabitants of their shores not exercised continuous sovereignty over their shores and waters from the earliest times

forward without any objection from foreign nations.

> Note: Finding 4 (except part 4.I) as to East Bay is equally applicable to all delta bays. It is requested that the various subparts (except I) of Finding 4 be answered with respect to factual evidence regarding delta bays other than East Bay, in the event of a negative response to Finding 10.

11. Louisiana has asserted jurisdiction over and ownership of all waterbodies in the delta on a point-to-point (headland-to-headland) basis.

A. Title to Louisiana's coastal inland waters passed to the State in 1812 by virtue of the nature of the Union. The United States retailed all public lands, but title to navigable inland waterbodies, including bays, vested to Louisiana upon its admission.

B. In light of the unquestionable bay character of delta bays in the mid 1800s (Finding 8.A), title to these waterbodies as navigable inland waters was confirmed to Louisiana under the doctrine recognized in *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212 (1845). (See 363 U.S. 1, 66 n. 108.)

C. Commencing in 1870, Louisiana enacted legislation to regulate oyster fishing in its coastal bays. (La. Exh. 55(1).)

D. Since 1886 Louisiana has legislatively reaffirmed its title to bays along its coast, includ-

ing those in the delta. (See Acts of 1886, 1892, 1902, 1904, and 1910 La. Exh. 55, tabs 2, 3, 5, 6, and 8, respectively.)

E. At the time these legislative reaffirmations of ownership were made, large portions of the bays in the delta qualified as juridical bays despite subdeltaic growth within and were designated on widely published maps as bays. (La. Exhs. 151, 169, 158, 274, 240, 256-A, 256-C, and 170.)

F. Louisiana has granted oyster leases in the shallow waters of many Mississippi delta bays subsequent to the above (Finding 11.D) legislation. (La. Exhs. 69, 70, 72, and 73).

G. Statutes regulating shrimping in Louisiana have defined the inside waters of the delta area (to which stringent closed season laws have applied) in a progressively refined and detailed manner, as follows:

Act 108 of 1926 (La. Exh. 55(173)):

> All . . . bays and sounds found along the Louisiana Coast of the Gulf of Mexico.

Act 143 of 1942 (La. Exh. 55(177)):

> All. . . bays and sounds along the Louisiana coast, and all other waters in and contiguous to the Gulf of Mexico *whether or not partly enclosed by* islands, sand [s]pits, marshes, or *delta fingers*, wherein the water is less than three (3) fathoms in depth. (Emphasis added. The vast majority of waters enclosed by delta fingers are less than three fathoms in depth. La. Exh. 8.)

Act 51 of 1948 (La. Exh. 55(179)):

> The inside waters shall include. . .Breton Sound, . . . Blind Bay, Garden Island Bay, East Bay, West Bay . . . and all other bays and sounds along the Louisiana coast. . . .

H. Since the early 1900s the Louisiana Wild Life and Fisheries Commission and its predecessor agency, the Department of Conservation, have used a system of boat and aircraft patrol in which imaginary lines joining outermost mudlumps and other features marking the seaward terminus of the passes and a belt of waters lying three miles from such lines have been utilized to enforce Louisiana's shrimping and fishing statutes. (Deposition of Captain Von Lubbe, La. Exh. 148, pp. 10-15; deposition of Captian Schouest, La. Exh. 147, pp. 13 & 15; deposition of Samuel Nunez, La. Exh. 145, pp. 10-13; Joseph Billiot, tr. 822-23.)

I. Arrests have been made and fines levied against persons violating Louisiana's statutes inside of the areas of the delta described in Findings 11.C to 11.H above, regardless of nationality. (See citations for Findings 5.R-5.U, *supra*.)

J. Louisiana issued mineral leases under Act 30

of 1915 as amended by Act 315 of 1926 covering most of the Mississippi delta bays prior to issuance of the Truman Proclamation in 1945. These included Mineral Lease 192 in 1928 covering West Bay and East Bay, Mineral Lease 195 in 1928 covering Grand Bay, Grand Coquille Bay and many other bays to the north of the delta contiguous with Breton Sound, and Mineral Lease 335 in 1935 covering Paddy Bay, Bull Bay, Delta Bend, Quarantine Bay, Breton Sound and Chandeleur Sound. Portions of these leases remain active. (La. Exhs. 88, 89, 90; testimony of Mr. Ory Poret, tr. 1497 *et seq.*)

12. Louisiana's claim to waters of the delta lying between and adjacent to the passes of the Mississippi River has never been disputed or questioned by foreign governments, nor was the claim disputed by the United States government until the inception of the lawsuit in 1948. To the contrary, all evidence indicates that both foreign governments and the Federal government acquiesced in Louisiana's claim. [See Findings under 6 for more specific treatment of East Bay.]

A. The Inland Water Line, established under Congressional Act of 1895, has designated all bays of the Mississippi delta as inland waters, at least for purposes of navigation regulation, since 1895. (La. Exh. 98.)

B. The Tern Islands Reservation, established by

Presidential Executive Order on August 8, 1907, encompassed the majority of the delta bays in question, as shown on maps of general circulation and wide publication. (La. Exh. 28, tabs 1, 4, 5, and 6; La. Exhs. 258 and 270.)

C. Both an expert employed by the United States and a prominent ornithologist recognized that such reservations must include jurisdiction over waters contiguous to the islands in question to be effective (La. Exhs. 28(27) and 30; 40 Stat. 755; 43 Stat. 1222; 43 Stat. 98; Louisiana Act 52 of 1921; Dr. Lowery, tr. 692-99; 702-06, and 742-44.)

D. The bays in question were patrolled by Louisiana, under authority of the United States, to protect birds. (La. Exh. 28(2); Dr. Lowery, tr. 704.)

E. The United States has found no evidence showing that United States jurisdiction over the area designated in the Tern Islands Reservation has ever been questioned or challenged by foreign nations. (See Findings 6.G-H, *supra.*)

F. The United States Department of Commerce Census Bureau in 1937 designated virtually all of the waters claimed as historic bays by Louisiana in the delta as internal or "State" waters in accordance with principles advocated by the State Department. (See Figure 8, *supra.*) This delimitation was made prior

to the inception of this lawsuit and was not disclaimed by the United States in the official non-restricted publication of that study. (See Findings 6.I-N, *supra* for citations and more detailed findings.)

13. Disclaimers of the United States are not effective in defeating Louisiana's claims to historic bays in the delta, as all such disclaimers have arisen after the inception of this lawsuit (See Finding 7, *supra*, for more specific subfindings, which are equally applicable to all delta bays.)

Caillou Bay

14. Caillou Bay qualified as a body of internal waters under principles of international and domestic law (as reflected in official documents of the United States) for at least 120 years. For at least 28 years (1940-1968), the water body was *explicitly recognized* by the United States, both prior to the inception of and during the bulk of the submerged lands lawsuit.

A. At least as early as 1863 the United States officially recognized that insular formations can enclose inland waters. This is reflected in a transmittal from Secretary of State Seward to Mr. Tassara, the Spanish Minister, on August 10, 1863 concerning jurisdiction off the Cuban Keys. (Appendix A, p. 1.)

B. The United States adhered to a position in international and domestic relations from at

least 1863 until at least 1968 in which straits which lead to inland waters were treated as inland waters, subject to application of bay rules. (Appendix A, pp. 7-9, 11, 12, 28-29, 32, 40, and 41.)

C. The validity of treating straits leading to inland waters under bay rules, and accordingly as potential inland waters, was not disputed at the 1930 Hague Conference, the concept being incorporated both in the Bases of Discussion (no. 17) and in the final Report of the Second Sub-Committee, under "Straits." (See Appendix A, pp. 7-8.)

D. The United States' proposal concerning assimilation of "undesirable pockets" at the 1930 Hague Conference was introduced as a *new* basis of discussion to deal at least in part with the problem of islands screening the coast. Except for possible domestic use in delimitations on the Tariff Commission Maps (U.S. Exh. 377), the method received little or no domestic recognition. The method was not accepted by the Hague Conference Committee members, the majority of whom favored enclosing islands separated by 10 miles or less with baselines. (Appendix A, p. 8.)

E. The position advocated by the United States Department of Commerce in delimiting internal waters for the 1940 Census indicates that the 1930 United States Hague Conference pro-

posal on "undesirable pockets" (14.D, *supra*) was not followed in official functions of the United States even a decade after its proposal, but instead, the 10-mile island rule was adopted, as follows:

> (1) where the coast line is regular it shall be followed directly unless there are offshore islands within ten nautical miles....
>
> * * * *
>
> (4) two or more islands less than ten and more than one nautical mile from shore shall be connected by a straight line or lines, and other straight lines shall be drawn to the shore from the nearest point on each end island. (La. Exh. 52, p. 33.)

(Appendix A, p. 10.)

F. The International Law Commission, in preparatory meetings leading up to the Geneva Conferences on the Law of the Sea, treated the system of straight baselines (present Article 4) separately from straight baselines around "groups of islands," which included both offshore islands and strings of islands along the mainland coast. (Appendix A, pp. 12-16.)

G. Because of ina' ility to reach a decision on the subject of island groups, the International Law Commission recognized that they *may* be treated under provisions sanctioning the straight baseline system. (Appendix A, pp.

15-16.) It was specifically recognized that the problem was not settled, however, and that further consideration should be given the problem at any future international conferences dealing with such matters. (Appendix A. pp. 16 and 31.)

H. The 10-mile island rule, first recommended by the Second Sub-Committee at the 1930 Hague Conference (finding D above), later adopted by the United States for measuring the limit of United States internal waters during the 1940 Census (finding 14.E, *supra*), and discussed in the International Law Commission work from 1952 to 1956 (Appendix A, pp. 12-16), was again followed in 1961 by various agencies of the Federal government (including the Justice and State Departments) in formulating the United States position in the submerged lands controversy. (La. Exh. 178—see Appendix A, pp. 22-28, for pertinent portions of the exhibit.)

I. Numerous situations are found in domestic cases, international adjudications, and in the writings of legal scholars from the last half of the 19th century to the present wherein islands constitute the periphery of a juridical bay. Notable among these are the Zuyder Zee in Holland, Buzzard's Bay in Massachusetts, Florida Bay in Florida, and Mira Bay and St. Mary Bay in Nova Scotia. (U.S. Exh. 97,

p. 7; *Manchester v. Massachusetts*, 139 U.S. 240, 243 (1890); La. Exh. 154, p. 210; *United States v. Florida*, No. 52, Original, *Report of Albert B. Maris Special Master* (1974), pp. 38-39; U.S. Exh. 47; See Appendix A, pp. 3-6, 18-19, 26, 27, 30, and 45.)

J. Caillou Bay has exhibited a configuration and characteristics sufficiently bay like to have been considered a bay on charts and maps, many of which have had worldwide circulation, for over 130 years. (La. Exhs. 171, 196, 157, 135, 215, 151, 274, 256, 258, 207, 268, 202, 270, and 50; U.S. Exhs. 347 & 348; see also Caillou Bay Findings 51 and 52, *infra.*)

K. Using the United States' position concerning either juridical bay delimitation (Findings 1.B and 2.B-K, *supra*) or delimitations of internal waters enclosed behind screening islands (Findings 14.A-I, *supra*), Caillou Bay constituted a body of internal waters from its earliest cartographic depiction (1842 Hughes Military Reconnaissance Map) until the inception of the 1948 lawsuit (and after, as demonstrated *infra*) (1948-1951). See Figure 11, *infra*, tracing the cartographic-juridical history of the bay. (U.S. Exh. 347; La. Exhs. 198, 247, 171, 157, 215, 151, 274, 256, 268, 270, and 50; Appendix A.)

L. Although a specific internal waters closure was not drawn for Caillou Bay on the Tariff

Commission maps delimiting the territorial sea, numerous such closures can be drawn so that the resulting 3-mile belt would be landward of the jurisdictional line portrayed on the map. See Figure 12. (U.S. Exh. 377-B.)

M. The Census Bureau's delimitation of Caillou Bay in 1937, representing a *published delimitation prior to the inception of this lawsuit*, reflects a closure based upon the following long-recognized principles:

(1) where the coast line is regular it shall be followed directly unless there are off-shore islands within ten nautical miles;

(2) where embayments occur having headlands of less than ten and more than one nautical mile in width, a straight line connecting the headlands shall set the limits; however,

(3) the coast line shall be followed if the indentation of the embayment is so shallow that its water area is less than the area of a semicircle drawn using the said straight line as a diameter; and

(4) two or more islands less than ten and more than one nautical mile from shore shall be connected by a straight line or lines, and other straight lines shall be drawn to the shore from the nearest point on each end island.

No disclaimer as to the effect of the delimitation is found in the officially published Department of Commerce description. (*Measure-*

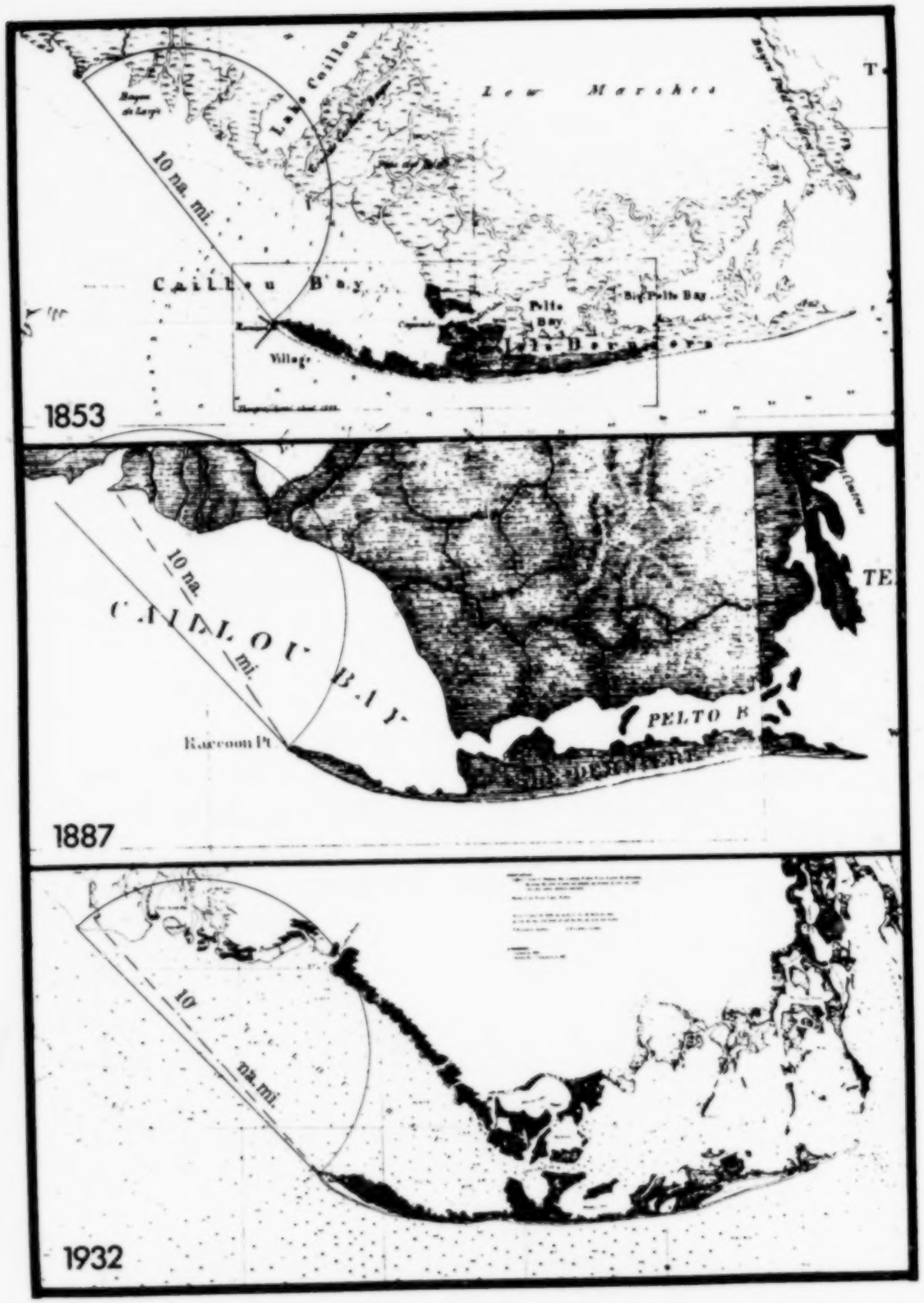


Figure 11. Cartographic-juridical history of Caillou Bay showing satisfaction of juridical bay requirements throughout the waterbody's history (base from *Louisiana Reply Brief*, Figure 158A).

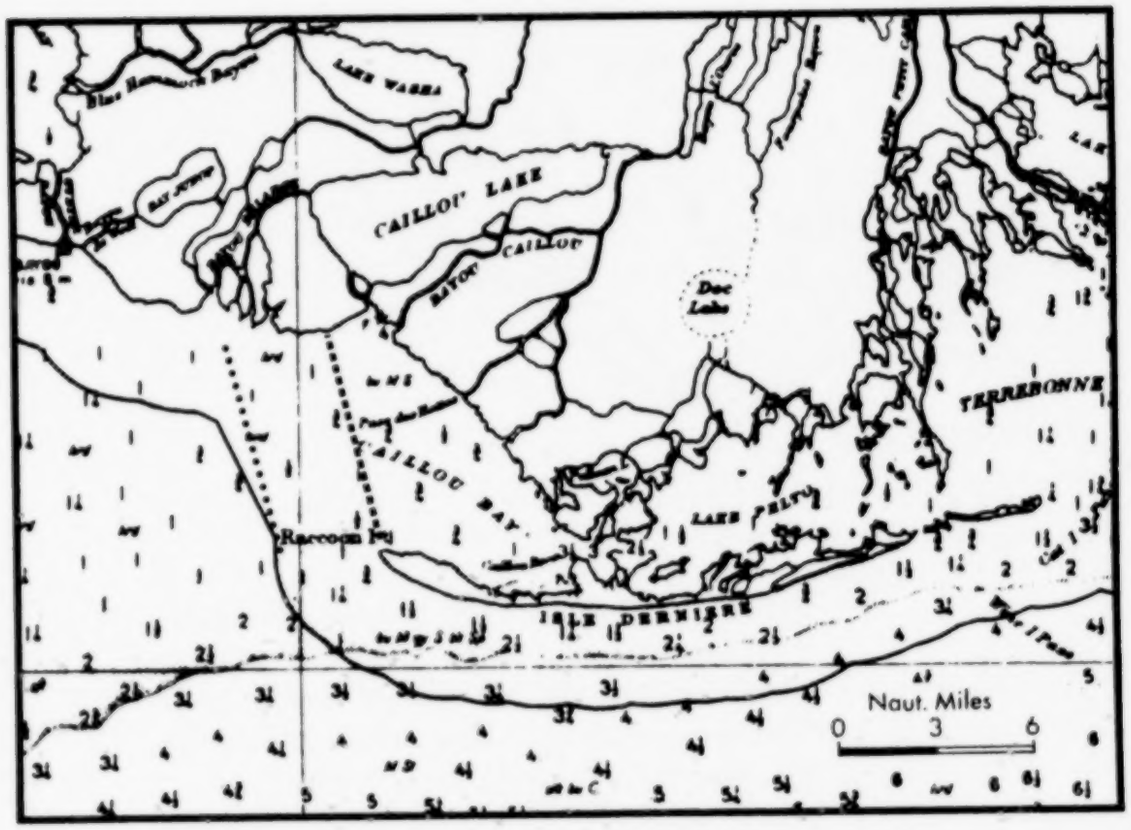


Figure 12. A portion of Chart 1116 showing the territorial sea delimitation of the United States Tariff Commission (solid line) [U.S. Exh. 377-B] and one possible inward closure across Caillou Bay (dashed line) which generates a three-mile belt (dotted line) landward of that of the Tariff Commission.

ment of Geographic Area, La. Exh. 52(1).) Figure 13 shows the official delimitation of Caillou Bay in 1940.

N. The Chapman Line, promulgated on October 26, 1950 (after the inception of the 1948 lawsuit) "as the most landward line that the Government would claim for the federal-state boundary" was based upon

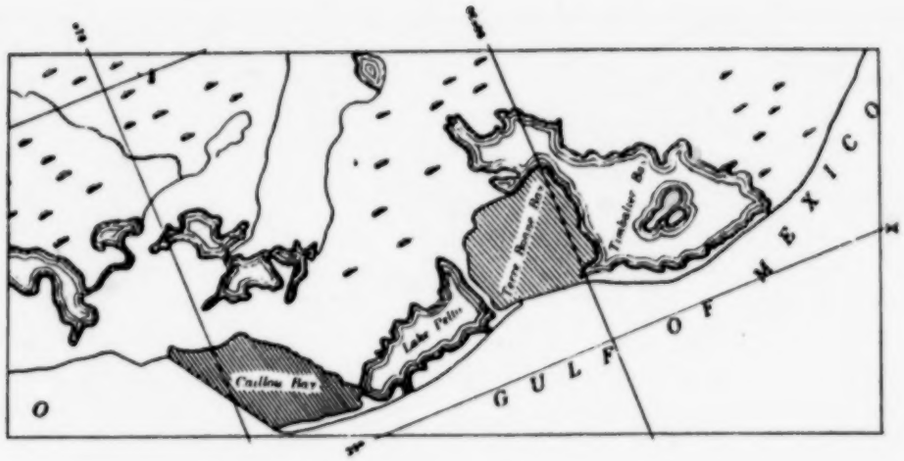


Figure 13. Plate VIII from La. Exh. 52(1), *Measurement of Geographic Area*, p. 45.

> principles [which] had been developed in international law or had been promulgated by the United States in its international relations," [including] the semicircular rule . . . and the 10-mile rule . . . for bays, and the rule for straits leading to inland waters. *Shalowitz* pp. 108-109.

This description delimited an internal waters closure from

> the northern headland at the mouth of Caillou Bay, said headland being the most southerly point on the main shore between Taylor's Bayou and Grand Bayou du Large, near latitude 29° 10′ 12″, longitude 90° 00′ 00″; thence by straight line in a southeasterly direction across the mouth of Caillou Bay to the ordinary low-water mark at Raccoon Point on the westernmost extremity of the Isles Dernieres; (Chapman Line description, U.S. Exh. 117). (See Line A, Figure 14).

(U.S. Exhs. 117, 118; 1 *Shalowitz* 108-112; Appendix A, pp. 20, 29-30; La. Exh. 286; See Finding 14.T, *infra.*)

O. In 1958, the Justice Department admitted in its *Brief for the United States in Support of Motion for Judgment on Amended Complaint* in *United States v. Louisiana, et al.*, No. 11, Original that

> . . . all the islands on the coast of Louisiana are so situated that the waters between them and the mainland are sufficiently enclosed to constitute inland waters.

This would include waters behind Isle Dernier, were they not considered inland waters under juridical bay principles. (Appendix A, p. 17; Finding 14.K, *supra.*)

P. Dr. G. E. Pearcy, Geographer of the State Department, in a study delimiting the baseline along the coast of the United States according to principles of the Territorial Sea Convention, recognized an internal waters closure within Caillou Bay (Figure 14, Line D). (La. Exhs. 176, 199 & 199A.)

Q. The Supreme Court recognized the inland nature of waters enclosed by islands along Louisiana's coast in *United States v. Louisiana, et al.*, 363 U.S. 1, 66 n. 108 (1960). (Appendix A, p. 21.)

R. At the request of the Justice Department, Mr. D. B. Clement of the Bureau of Land Management confected a description of the Louisiana coast in 1961 to be used in this lawsuit based upon international law principles advocated by the United States. This description contained the following internal waters closure at Caillou Bay:

> . . . Thence easterly along the ordinary low water line to the headland of Caillou Bay, said headland being the most southerly point on the main shore between Taylor's Bayou and Grand Bayou du Large, in approximate latitude 29° 10′ 12″ N., longitude 91° 00′ 00″ W.;
>
> . . . Thence by straight line in a southeasterly direction across the mouth of Caillou Bay to the ordinary low water line at Raccoon Point on the western extremity of Isles Dernieres;

(La. Exh. 178, pp. 1-2 and 8; See Figure 14, Line C.)

S. George Swarth of the Justice Department commented on the restrictive nature of the B.L.M. Caillou Bay closure (Finding 14.R, *supra*) and additional closures along the northern shore of the Caillou Bay area.

> . . . These are similar to the Chapman Line, and make a 6 3/4 mile closing line for Caillou Bay. Dr. Pearcy uses a much

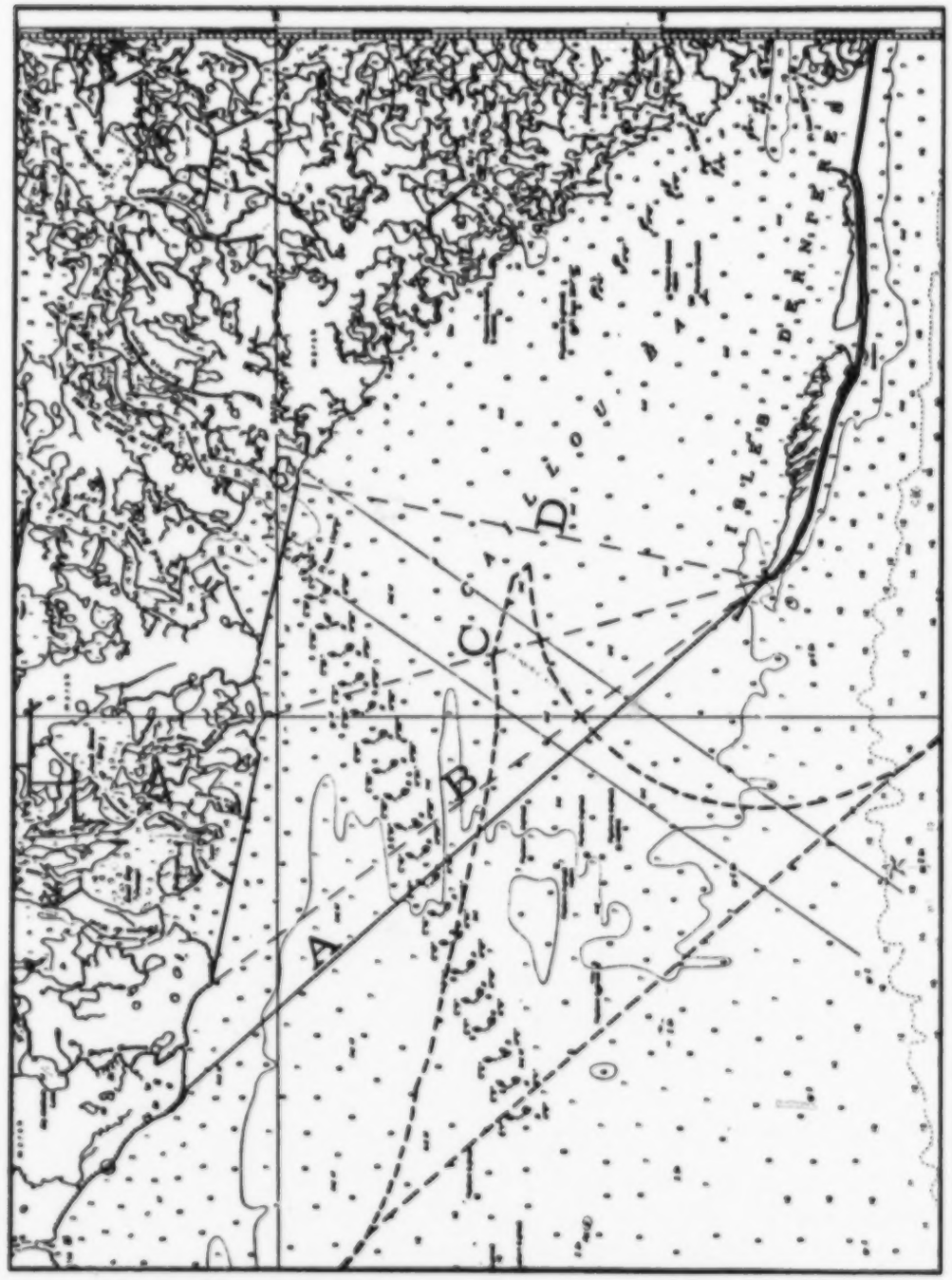


Figure 14. Portion of Chart 1275 showing Caillou Bay Closing Lines (A) claimed by Louisiana; (B) recognized in the 1940 Census Bureau delimitation of internal waters and suggested by George Swarth of the Justice Department in 1961; (C) recognized in the Chapman Line and by the Federal interdepartmental committee in 1961 and by the Federal government during meetings of the Joint (State/Federal) Committee in 1962; and (D) recognized by Dr. Pearcy, Geographer of the State Department, in 1960. Dashed lines compare 3-mile belts generated by present State and Federal claims. (Base of reduced-scale Chart 1275 from 1968 *Louisiana Brief*, Exh. 51.)

more restricted line across Caillou Bay, putting its northern terminus at the point about 0.4 mile west of the mouth of Turtle Bayou. That gives a closing line of about 6.4 miles. However, *query if the ordinary application of the 10-mile rule would not put the northern headland of Caillou Bay at the southernmost point west of East Junop Bay? That gives a closing line of about 6.8 miles and gives Caillou Bay reasonable headlands* (using Raccoon Point at the south in all cases) *and an area fully meeting the semicircle rule. While it is disadvantageous to us, our own rules seem to me to require it.* (Figure 14, Line B.)

* * *

Dr. Pearcy draws a single straight line from the west headland of East Junop Bay to the east headland of Taylors Bayou, which seems justifiable under the rules; but that would be eliminated by *the direct line to Raccoon Point*, discussed above, which *seems equally justifiable.*

* * *

This conforms to the Chapman Line. As indicated above, Dr. Pearcy puts the north headland of Caillou Bay about three miles farther east; *the justification for doing so is not apparent to me.*

(La. Exh. 178, pp. 19-20, emphasis added.)

T. A. L. Shalowitz, Assistant to the Director,

U.S.C. & G.S., although considering the more restrictive closure proposed by Dr. Pearcy in 1960, (Finding 14.P), recommended the line followed in the Chapman Line description (Finding 14.N) and adhered to by D. B. Clement, (Finding 14.R) indicating he felt that in the absence of coastal change, the Chapman Line must be recognized,

> . . . But since the Chapman Line delineation forecloses the use of a more restrictive line in areas where no changes have occurred since the line was drawn, a retention of the closing line used in the Chapman Line delineation is recommended. This is the same as the BLM line.

This understanding is clarified by Shalowitz in Vol. 1 of *Shore and Sea Boundaries* (1962), p. 108-109,

> It was understood at the time [of the Chapman Line description—1950] that in general the line was being promulgated as the most landward line that the Government would claim for the federal-state boundary, but subject to modification, landward or seaward, in areas where the lack of up-to-date surveys prevented an accurate map delineation. . . .

(La. Exh. 178, pp. 54-55; 1 *Shalowitz* 108-109.)

U. The final Caillou Bay internal waters closure concurred in by the interdepartmental committee and transmitted to the Solicitor General read as follows:

> . . . Thence easterly along the ordinary low water line of the Gulf of Mexico to the north headland of Caillou Bay, said headland being the most southerly point on the main shore between Taylors Bayou and Grand Bayou du Large, near latitude 29° 10′ 12″ N., longitude 91° 00′ 00″ W.;
>
> Thence southerly by a straight line across the mouth of Caillou Bay to a point on the ordinary law water line at Raccoon Point on the western extremity of the Isles Dernieres; (See Figure 14, Line C.)

(La. Exh. 178, p. 96.)

V. Throughout the interdepartmental correspondence related to delimitation of Caillou Bay (Findings 14.N, P, and R-U, *supra*), the waterbody was treated as a juridical bay. As no mention is made of the 10-mile island rule being applicable at this locale, it must be assumed that the segments of Isle Derniere were considered to be an integral part of the mainland. La. Exh. 178.

W. The Federal constituents of the 1962 Joint (State-Federal) Committee appointed to consider the effects of applying the Territorial Sea Convention to the Louisiana coast recog-

nized the juridical bay character of Caillou Bay and adhered to the closure evolved in the Federal interdepartmental committee (Finding 14.U and Figure 14, Line C). (La. Exhs. 257, p. 8 & 286.)

X. Not until January 1968 did the Federal government deny that Caillou Bay constituted a juridical bay. The premise for such a change after 28 years of explicit recognition was apparently rationalized on the basis of proposed changes in international and, allegedly, domestic law by ratification and adoption of the Territorial Sea Convention. (*Motion by the United States for Entry of a Supplemental Decree* . . . pp. 20-21, 70-71, 78-80; See Appendix A, pp. 42-44.)

Y. In dialog between Arthur Dean, representative of the State Department, and Senator Russell Long concerning the United States' adoption of the Territorial Sea Convention, the basis for the United States' altered position at Caillou Bay was specifically rendered invalid.

> Mr. Dean: This treaty, being a treaty, a convention, rather, between sovereign states would not apply to relations under our Constitution between the rights of the several States and the Federal Government.
>
> Senator Long: Right.

You know at the present time there is a case over in the Supreme Court between the State of Louisiana and the United States that is relevant to some of the matters in this treaty?

Mr. Dean: Yes.

Senator Long: And it is not intended in any respect that this treaty should prejudice either the United States or the State government of Louisiana in that case before the Court?

Mr. Dean: That is correct, Senator.

(La. Exh. 283(16), p. 19 — See *Louisiana Brief*, Vol. I, Part 1, pp. 47-51a, for general constitutional discussion, including the above dialog.)

15. The Federal government's retreat from its long-advocated position regarding Caillou Bay as a juridical bay (or inland waterbody qualifying under the 10-mile island rule) has prejudiced Louisiana claims to that waterbody in this lawsuit.

    A. Louisiana, in good faith, continued exercising jurisdiction over the Caillou Bay area including leasing waterbottoms lying within Caillou Bay and lying within 3 geographic miles of the line recognized by the Federal government in 1950 (Finding 14.N), in 1961 (Finding 14.U) and in 1962 (Finding 14.W) and generally recognized by admission of the Justice

Department in 1958 (Finding 14.0) and by the Supreme Court in 1960 (Finding 14.Q). (La. Exh. 55, tabs 24-34; La. Exh. 96.)

B. Low-water elevations and the low-water line of the shore lying behind closures recognized by the Federal government until 1968 were not surveyed in compiling the Set of 54 Maps in the Caillou Bay area. As the United States now contends that the low-water line along the coast of the Isle Derniere segments and the interior portions of the formerly recognized bay should be utilized to delimit Louisiana's "coast line" under the Submerged Lands Act, Louisiana may be losing many square miles of jurisdiction because of its reliance upon the former United States position. (La. Exh. 300 and related exhibits and testimony; Figure 14, *supra;* Finding 47, *infra.*)

C. Louisiana's argument concerning assimilation of the Isle Derniere segments to the mainland for delimiting juridical Caillou Bay (Finding 54, *infra*) has already been prejudiced by *dicta* remarks of the Supreme Court, 394 U.S. 11, 67 n. 88, which relied upon the incomplete representation of the Isles Dernieres configuration shown on Maps 19 and 20 of 41 of the Set of 54 Maps. The Special Master has already tentatively ruled against assimilation of the island segments *based upon the Court's remark*. Tentative Draft Report of the Special Master, p. 56.

D. The correspondence between the State Department and the Justice Department, particularly but not exclusively with Solicitor General Lee Rankin, has not been presented to the Supreme Court at this time nor was it available to Louisiana until this hearing. (Appendix A, p. 20; *in camera* documents; *Louisiana Brief*, Vol. V, sealed brief.)

16. The geographic and economic characteristics of Caillou Bay are such that it would have been unnatural had the inhabitants of its shores not exercised continuous sovereignty over its shores and waters from the earliest times forward without any objection from foreign nations.

A. Caillou Bay has exhibited a configuration and characteristics sufficiently bay like to have been considered a bay on maps and charts for over 130 years. (See Finding 14,J, *supra* and 51 and 52; *infra.*)

B. The waters of Caillou Bay are completely surrounded by the lands and inland waters of Louisiana, except for the opening facing on the Gulf of Mexico. (La. Exhs. 50 & 198.)

C. The various bayous and other tributaries entering Caillou Bay are entirely situated within the lands of Louisiana. (La. Exh. 50 & 198.)

D. Caillou Bay is well marked by headlands inside of which the mariner instinctively feels himself within the jurisdiction and dominion of

Louisiana. (Finding 4.E; La. Exh. 50; Mr. Billiot, tr. 826-28.)

E. All of Caillou Bay's waters are such that they can be easily patrolled and protected by the government entity that has controlled its shores. (La. Exh. 50; Mr. Billiot, tr. 826-28.)

F. The waters of Caillou Bay have been sufficiently enclosed to provide shelter for coastal craft. (La. Exhs. 50, 138, 144, 151, 157, 268.)

G. Caillou Bay is not and has never been a waterway for intercourse between nations. (La. Exh. 50; Mr. Richardson, tr. 5085.)

H. Historic records indicate that the western portion of Isle Derniere enclosing Caillou Bay on the south was used as a resort area at least as early as the 1830s (La. Exhs. 137, 138-144, and 196.)

I. At the date of the first accurate large-scale survey of Isle Derniere (1853 - U.S.C. & G.S. survey T-410), the village of Last Island is designated, with a number of buildings and a hotel being clearly indicated. (La. Exh. 196.)

J. The village, which had attained quite a population by the mid-1850s, was totally destroyed by a hurricane in August 1856. (La. Exhs. 138-144, Dr. Morgan, tr. 2808.)

K. Caillou Bay, along with Timbalier, Terrebonne, and Atchafalaya Bays, were considered "important indentations" of the Terrebonne

Parish coast by S.H. Lockett, surveyor of "The Louisiana State University Topographical Map of Louisiana," first published in 1876. Caillou Bay is designated upon that map. (La. Exh. 135, p. 116 and map opposite p. 32.)

L. From the beginning of recorded history, the inhabitants of Caillou Bay's shore have had vital economic interests in that waterbody, including using it as a sheltered transportation route to the island resort, protecting and cultivating oyster fishing within the bay, protecting shrimping within the bay, preventing pollution, and exploring for and developing oil and gas resources beneath the bed of the bay. These activities commenced long before the Truman Proclamation of 1945 and have continued to date. (See Finding 17, *infra.*)

M. If the State of Louisiana had not controlled oyster fishing, shrimping, and other marine life exploitation carried on in Caillou Bay, there would have been disasterous effects upon the biologic resources of the bay. (J.Y. Christmas, tr. 1129-1131.)

N. The importance of shrimping in Caillou Bay is reflected by the fact that some 4000 trips are made annually to exploit this resource. (J.Y. Christmas, tr. 1125.)

17. Louisiana has claimed and exercised jurisdiction and sovereignty over Caillou Bay as an inland waterbody since entering into the Union in 1812.

A. Caillou Bay was a juridical bay in 1812 when Louisiana entered the Union, as determined from its characteristics on the 1778 Gauld map and 1842 Hughes Military Reconaissance map of the area (Finding 14.K, *supra*, and Figure 11; La. Exhs. 198 & 247; U.S. Exh. 347; La. Exh. 185-A, sheet 1; Dr. Morgan, tr. 2797-2801.)

B. Louisiana's sovereignty over Caillou Bay was established in the State in 1812 by virtue of the nature of the Union. While the United States retained all public lands except water bottoms, title to the water bottoms of rivers, bays, and other navigable inland waterbodies vested to Louisiana on its admission.

C. The doctrine recognizing State ownership of watterbottoms underlying navigable waters in *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212 (1845), is applicable to Caillou Bay under Findings 17.A & B, *supra.* (363 U.S. 1, 66 n. 108.)

D. As early as 1870, Louisiana enacted legislation to regulate oyster fishing in its coastal bays. (La. Exh. 55(1).)

E. Beginning in 1886, the Louisiana legislature enacted legislation in conjunction with oyster fishing regulation which reaffirmed the State's claim to coastal inland waterbodies. (Act 106 of 1886—La. Exh. 55(2); Act 110 of 1892—La. Exh. 55(3); Act 153 of 1902—

La. Exh. 55(5); Act 52 of 1904—La. Exh. 55(6); Act 189 of 1910—La. Exh. 55(8); etc.)

F. During the entire time that Louisiana legislatively reaffirmed its claim to Caillou Bay, that waterbody was recognized as a bay on charts and maps published by private State and Federal agencies and widely distributed. (La. Exhs. 157, 135 (p. 116, map opposite p. 32), 215, 151, 274, 256A-D.)

G. During the entire time that Louisiana legislatively reaffirmed its title to Caillou Bay, that waterbody qualified as a juridical bay under principles of domestic and international law. (See Finding 14, *supra*, especially subfinding 14.K and Figure 11.)

H. Oyster leases were granted within Caillou Bay beginning in 1905 which remained in force until the mid-1940s. (La. Exh. 55, tabs 140, 142, and 143; La. Exhs. 75 and 76.)

I. Beginning in 1910 Louisiana, began regulating shrimp fishing in waters of the State. (Act 245 of 1910—La. Exh. 55(168).)

J. Subsequent legislation supplementing Act 245 of 1910 regulating shrimping in Louisiana waters has defined the inside waters of Louisiana (to which stringent closed season laws have applied) to include Caillou Bay, by definition until 1942 and by name after that time. (La. Exh. 55, tabs 173-179.)

K. Foreign fishing vessels have stayed outside of Caillou Bay as it has been considered inside waters subject to the exclusive jurisdiction of Louisiana. (Deposition of Captain Von Lubbe, La. Exh. 148, pp. 27-28.)

L. Enforcement agents of the Louisiana Wild Life and Fisheries Commission have delimited the waters of Caillou Bay using a point-to-point system of enforcement in which the waters lying landward of a line from Raccoon Point to the landform at Bayou Junop have been regarded as inside waters of Louisiana. Enforcement activities have included a belt of waters lying 3 miles from this line as well. (Joseph Billiot, tr. 826-28.)

M. Pursuant to Act 30 of 1915,

> Authorizing the Governor to lease lands, including lake and river beds and other bottoms, belonging to the State, and providing the terms and conditions of such leases.

State Lease 188 was granted in 1928, seventeen years prior to the Truman Proclamation, concerning the area designated on the lease instrument as follows:

> All the lands, beds and bottoms belonging to the State of Louisiana, comprised within the area extending from the land or shore line of the Parish of Terrebonne, La., which land or shore line

begins at Point au Fer, and runs in a southeasterly direction until it intersects the dividing line between the Parishes of Terrebonne and Lafourceh, Louisiana, into the marginal or maritime belt of the Gulf of Mexico to the extreme limit or boundary of the domain, territory and sovereignty of the State of Louisiana, *including the beds and bottoms underlying the waters of Caillou Bay*, Lake Pelto and that portion of Timbalier Bay embraced in the Parish of Terrebonne. (Emphasis added, La. Exh. 91.)

N. Official maps of the State of Louisiana made during the period in which the above lease was in effect clearly designate Caillou Bay (La. Exhs. 256D, 258, 270).

O. Some 27 mineral leases were granted covering all or parts of the bed of Caillou Bay, both prior to and subsequent to the Truman Proclamation of 1945. (La. Exhs. 58, 86, 91, 96.)

18. Louisiana's claim to Caillou Bay has never been disputed or questioned by foreign governments, nor was the claim disputed by the United States government until 1968, two decades after the inception of the 1948 lawsuit. All evidence indicates that both foreign governments and the Federal government acquiesced in Louisiana's claim.

A. The United States Department of Commerce Census Bureau delimitation of the United States outer territorial limits made in con-

junction with the 1940 Census delimited the internal waters of Caillou Bay to be from Raccoon Point, on the westernmost point of Isle Derniere, to the landform west of Bay Junop. This delimitation was published in a non-restricted government document and was not disclaimed for any purpose. (See Findings 6.J-N and 14.M including Figure 13; La. Exh. 286; La. Exh. 52(1).)

B. The United States has offered no evidence of any protest by foreign governments to the United States delimitation of Caillou Bay as internal waters, nor has it offered any records of adverse claims to Caillou Bay by foreign nations.

C. The continuous patrolling and enforcement of fisheries regulations by Louisiana agents at Caillou Bay was open, apparent, and visible to all—United States nationals and foreigners alike—who may have taken occasion to examine conditions existing in Caillou Bay. (Joseph Billiot, tr. 826-829; deposition of Captain Von Lubbe, La. Exh. 148, pp. 27-28.)

D. The United States has offered no evidence that the right of Louisiana to designate waters of Caillou Bay as "inside waters" subject to exclusive state control over shrimp fisheries has ever been questioned by foreign governments.

E. The United States explicitly recognized large

portions of Caillou Bay as internal waters subsequent to the inception of this lawsuit in 1948 and *until 1968*. (See Findings 14.N-Y, *supra*.)

19. Disclaimers of the Federal government are ineffective in defeating Louisiana's historic claims at Caillou Bay, as all such disclaimers have arisen well after the inception of this lawsuit. (See Findings 7.A-D, 14.N-Y, and 15.A-C.)

Shell Keys

20. The waters surrounding and contained within the Shell Keys were traditionally treated as inland waters until 1961, after this lawsuit arose, under principles used and advocated by the United States.

A. A portion of the Shell Keys area was set aside as a lighthouse reservation by Executive Orders of September 13, 1837 and July 9, 1855. (No. 2 of Plaintiffs Answers to Defendant's Interrogations One to Fourteen dated October 23, 1969.)

B. The 1855 Order was vacated by an Executive Order dated August 17, 1907, creating the Shell Keys Reservation, as follows:

> It is hereby ordered that the Executive Order of July 9, 1855, creating the Light House Reservation which embraces a small group of unsurveyed islets located in the Gulf of Mexico about three and one-half miles south of Marsh Island, Louisiana, and approximately in latitude 29° 26′ north, longitude 91° 51′ west from Greenwich, as appears upon United States Coast Survey Chart No. 200, be, and the same is hereby vacated and set aside; and it is also ordered that these islets, located within the area segregated and shown upon the diagram hereto attached and made a part of this Order, be, and they are hereby reserved and set apart for the use of the Department of Agriculture as a reserve and breeding ground for native birds. This reservation to be known as Shell Keys Reservation. (La. Exh. 28(26).)

C. Both Dr. Lowery and Warren Bourn, a biologist with the U.S. Department of Interior, concurred that the designation of the reservation to include only the islets in question, without control over surrounding shallow waters, would render the reservation ineffective as a bird refuge. (La. Exh. 28(27); Dr. Lowery, tr. 727-728; See Finding 6.F, *supra*.)

D. Louisiana asserted jurisdiction over and title to the waters contiguous to and within the Shell Keys as "inlets . . . bordering on the Gulf of Mexico" by Act 106 of 1886 and many subsequent acts and by leasing portions of the area in question. (La. Exh. 55, tabs 2, 3, 5, 6, 8; La. Exh. 77.)

E. The United States has offered no evidence of protest by foreign nations to the exclusive

United States control over the shallow waters contiguous with the Shell Keys reefs.

F. Under principles adopted by the United States Department of Commerce Census Bureau in its 1937 delimitation of the limits of internal waters in the United States, the waters enclosed by the Shell Keys would have been internal waters. (See Findings 14.E & M; Appendix A, p. 10; La. Exh. 52(1).)

G. At the Florida Keys the Census Bureau delimited waters with considerably less enclosure (isolated elevations along the periphery of the Keys were used as basepoints) as internal, or State, waters of Florida. (La. Exh. 52(1), Plate VI, p. 43—a composite of which is reproduced as Figure 15; see Finding 20.N, *infra.*)

H. The United States Coast and Geodetic Survey has considered the Shell Keys area to be, for all practical considerations, a largely non-navigable area and has accordingly portrayed large portions of the area on coastal charts as having a common low-water line. See Figure 16 below.

I. In its 1958 *Brief for the United States in Support of Motion for Judgment on Amended Complaint*, p. 177, the Federal government recognized the inland character of waters enclosed by the Shell Keys:

> It happens that all the islands on the coast of Louisiana are so situated that the waters between them and the mainland are sufficiently enclosed to constitute inland waters. . . .

(See Appendix A, p. 17.)

J. The Supreme Court recognized the principle of islands enclosing inland waters along Louisiana's coast in 1960 (363 U.S. 1, 66 n. 108). (See Appendix A, p. 21.)

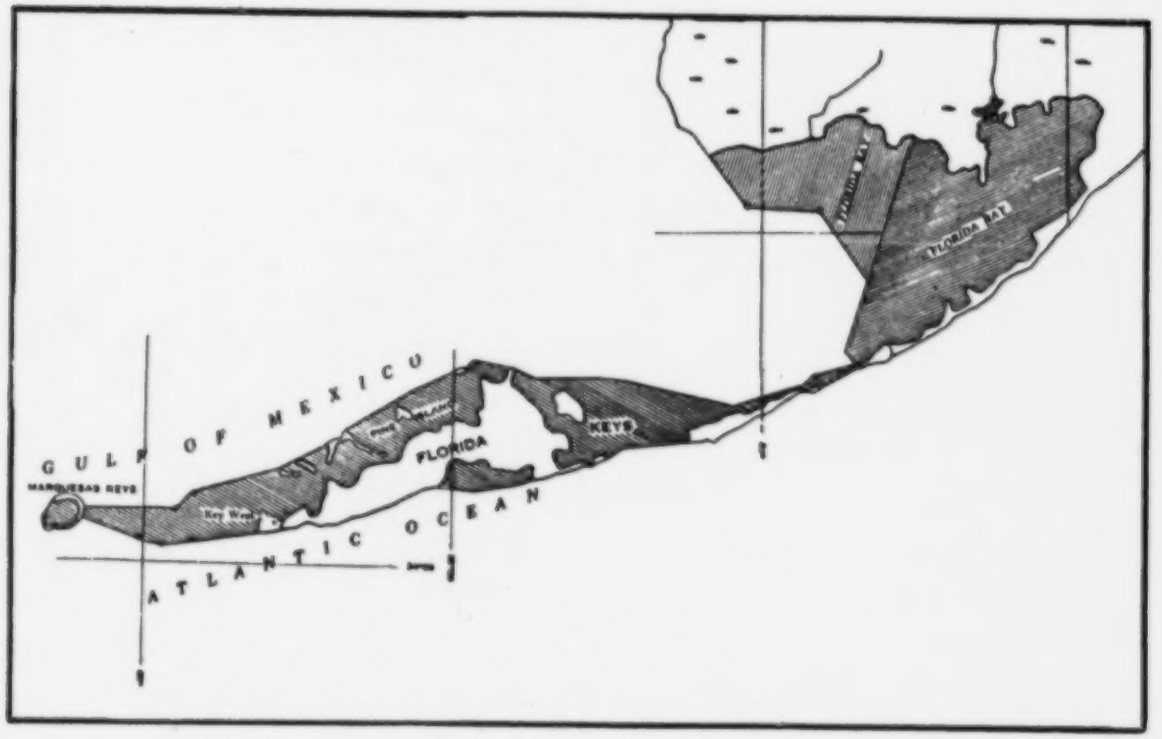


Figure 15. Delimitation of Florida's internal waters at Florida Bay and the Florida Keys by the United States Census Bureau in conjunction with the 1940 Census. Note the similarity with the holding of Special Master Maris in *United States v. Florida*, No. 52, Original (Finding 20.N, *infra*). (La. Exh. 52(1), Plate VI, p. 43.)

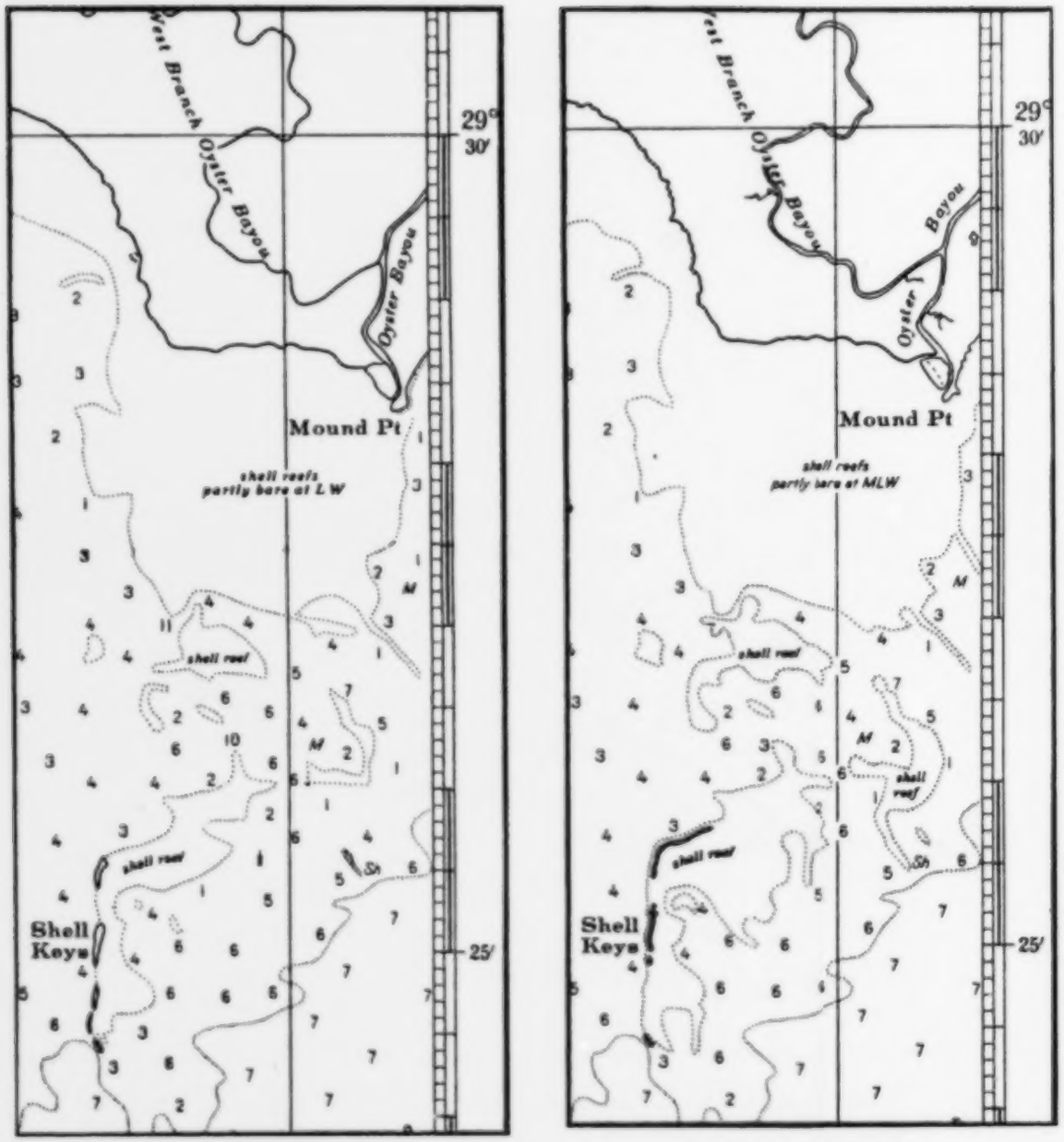


Figure 16. Chart 1277 (A) first edition (11/4/38) and (B) 14th edition (7/4/70) showing the official U.S.C. & G.S. treatment of the closely clustered reefs. Note that much of the area is surrounded by common low-water lines.

K. In 1961 Donald B. Clement of the Bureau of Land Management prepared the following description of Louisiana's coast line in the vicinity of Shell Keys to be used in this lawsuit:

> Thence in a southeasterly direction along the ordinary low water line of the Gulf of Mexico on the southern shore of Marsh Island to a point on the ordinary low water line at a prominent point on the south shore of Marsh Island in approximate latitude 29° 28′ 36″ N., longitude 91° 50′ 45″ W.;
>
> Thence by a straight line in a southerly direction to the ordinary low water line at the northwestern extremity of a group of small islands comprising the "Shell Keys";
>
> Thence in a southerly direction along the ordinary low water line on the west side of said "Shell Keys", to the southern extremity of said keys;
>
> Thence in a northerly direction along the ordinary low water line on the east side of said "Shell Keys" to the northeastern extremity of said keys;
>
> Thence by a straight line in a northeasterly direction to the ordinary low water line at the southern extremity of Mound Point on the south shore of Marsh Island, being the eastern headland of Oyster Bayou;

This description is delineated on a portion of Map 4 of 5 (La. Exh. 353) as Figure 17. (La. Exh. 178, pp. 6-7.)

L. Comments on D. B. Clement's description (Finding 20.K, *supra*) by George Swarth of the Justice Department, which led to a federal retreat from the former United States position at Shell Keys, was based upon a consideration of only the Shell Key islands and disregarded the myriad of low-water elevations that greatly augment the inland character of intervening waters.

> 6-9. This departure from the shore of Marsh Island to run the coast line around the Shell Keys, seems unjustified, as the intervening water lacks any of the characteristics of inland water. The keys are only a little more than three miles from shore, so that their three-mile belt and the three-mile belt along Marsh Island will merge, giving all the intervening submerged land to the State. In view of this circumstance, I think we may recede to this small extent from our statement to the Court [U.S. Brief, 177] that the lands between the islands and the mainland belong to Louisiana because all the islands are so situated as to enclose inland waters.

(La. Exh. 178, p. 18.)

M. A. L. Shalowitz of the U.S.C. & G.S. approved Mr. Swarth's coast line change as follows:

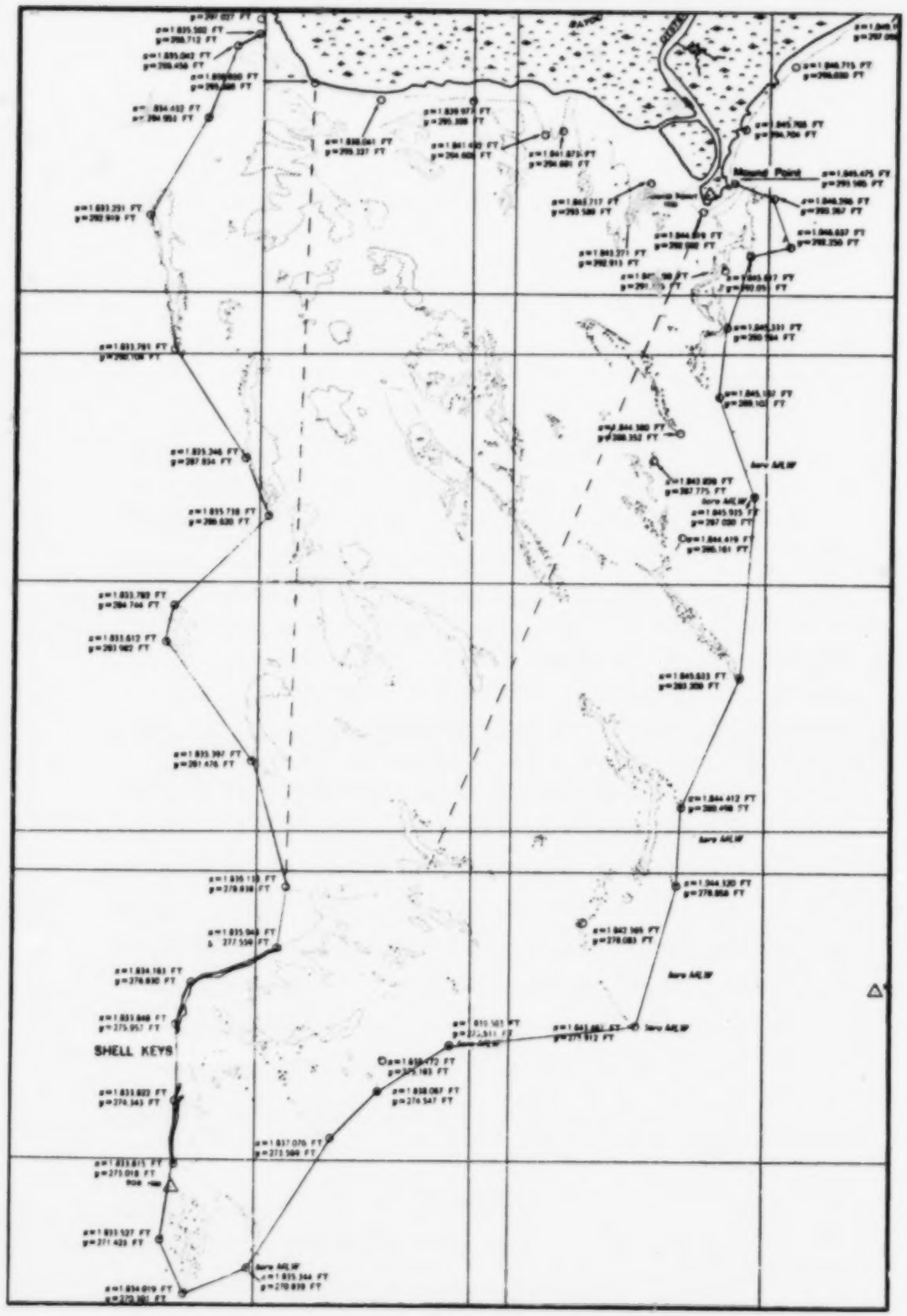


Figure 17. Comparison of Louisiana's historic claim (solid closures) with the inland waters closures (dashed) recognized by the U.S. Interior Department in applying the principle of islands enclosing inland waters recognized by the United States Justice Department in 1958 and by the Supreme Court in 1960. (See Findings 20.H-K; La. Exhs. 178 & 353 [Map 4 of 5].)

> Calls (6-9) This treatment is concurred in and follows the Recommendation made for Item (b) in Part II.

However, subsection 4 of Item (b) in Part II states:

> (4) Insofar as determining which islands form part of a land form and which do not, no precise standard is possible. Each case must be considered within the framework of the principal rule. *One indication of homogeneity might be a common low-water line.*

(La. Exh. 178, pp. 39 & 53, emphasis added.)

Note the U.S.C. & G.S. treatment on Figure 16, *supra*, of the closely clustered reefs; large portions of the area are indicated as having a common low-water line. Data from which the latest chart was compiled are based upon the 1960 low-water survey (made for purposes of this litigation), the interpretation of which is shown as the basemap for Figure 17, *supra*. (U.S. Exh. 202, Figure 17 on p. 41; La. Exh. 178; Finding 20.H, *supra*.)

N. In treating the Florida Keys, Judge Maris, Special Master in *United States v. Florida*, No. 52, Original, enclosed waters within reef groups as inland waters based upon Supreme Court rulings in the California and Louisiana submerged lands cases and the traditional

(pre-litigation) position of the United States concerning island groups:

> The remaining islands, in the main chain of the Keys west of Knight Key, comprise three *groups* which may be considered separately, the lower Florida Keys from Money Key to Key West, the Marquesas Keys and the Dry Tortugas Islands. *In the case of each group the narrow waters within the group are inland waters of the State of Florida and the coastline follows* the ordinary low-water along those portions of the coast of the outer islands and low-tide elevations of the group which are in direct contact with the open sea and *straight lines drawn between those islands and low-tide elevations to mark the seaward limit of the inland waters between and behind them.*
>
> * * * * * *
>
> Likewise the location of the coastline of the lower Florida Keys from Money Key to Key West *as a group*, of the Marquesas Keys *as a group*, and of the Dry Tortugas Islands *as a group*, will have to be determined by the parties hereafter in accordance with the criteria hereinabove stated. It is impossible for me on the record now before me to make a precise determination of the location of the coastline of these three *groups of islands* so far as concerns *the closing lines marking the seaward limits of the narrow inland waters lying between the islands of each*

group. If the parties are unable to agree as to any of these closing lines application for further supplementary proceedings to determine them should be authorized by the Court. (Emphasis added.)

This principle of enclosure is the same as that advocated and adopted by the U.S. Department of Commerce in 1940 (see Figure 15, *supra.*) (Report of Albert B. Maris, Special Master, *United States v. Florida*, No. 52, Original, filed January 18, 1974, pp. 39, 52-53, and 55; Finding 20.G; and Finding 20.J, *supra.*)

JURIDICAL/GEOMORPHIC (ARTICLE 7) CLAIMS

South Pass to Southwest Pass: East Bay

21. From at least 6/5/50 (and as early as 4/1/44) until 12/4/50, a line approximating line A on La. Exh. 197, and more precisely shown on La. Exh. 23A (see Figure 18, *infra*) enclosed a waterbody meeting all juridical bay requirements under Article 7 of the Territorial Sea Convention. (See La. Exhs. 22 and 23A for analysis of effective dates.)

    A. The mudlump island lying at the eastern terminus of the closing line constitutes the apex of the South Pass sand spit salient and otherwise qualifies as an appropriate natural entrance point. (La. Exh. 23A, *Louisiana Brief*, pp. 134-140.)

B. Waters intervening between the above-referenced mudlump island and the mainland were so shallow that they could not be and consequently were not sounded by the USC&GS. Later editions with better defined hydrography indicated an extensive mean low-water line connecting these mudlumps to the mainland. (La. Exhs. 23A, editions of 1944 and 1955, and 216; James Richardson, tr. 5057-5064, in connection with the absence of soundings and shoaling phenomena; Finding 22.A, *infra.*)

C. The feature at the western terminus of the closing line constitutes an identifiable "minor shore form" related to the headland landform which had historically constituted the western terminus of a well-defined indentation. (1 *Shalowitz* 64; La. Exh. 23A; See Figure 5, *supra*, for a graphic summary of the geomorphic history of this headland.)

D. The penetration of the waterbody enclosed by the subject closing line is in such proportion to the width of its mouth as to enclose landlocked waters. (La. Exhs. 23A, 229, 244; Figure 18, *infra.*)

E. The water area enclosed by the subject closing line meets semicircle test requirements under the most conservative planimetry delimitation techniques. (La. Exh. 23A; Figure 18.)

22. From 12/4/50 to 9/17/56, a line approximating

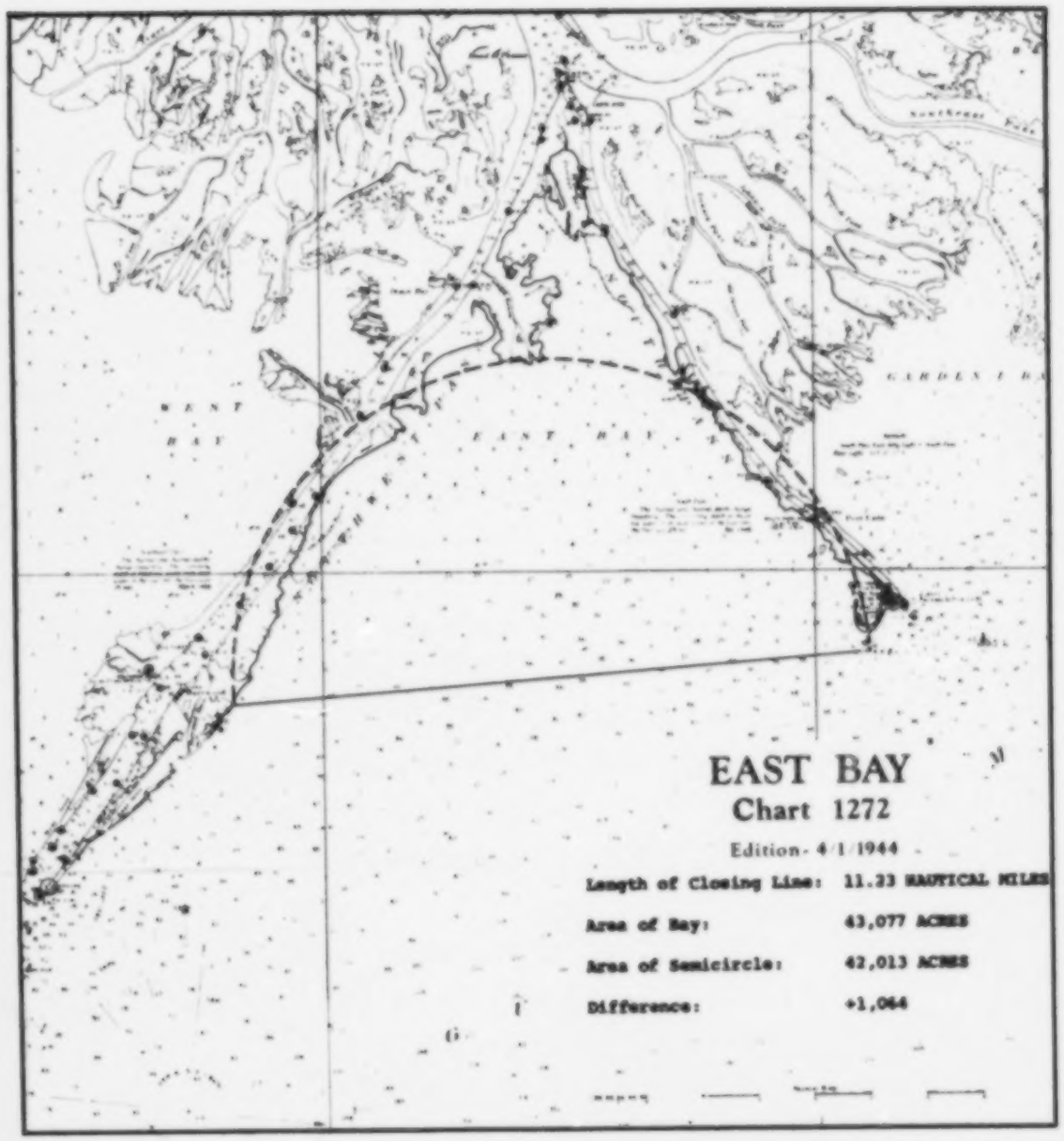


Figure 18. Portion of La. Exh. 23A showing semicircle test data for a juridical bay closure (approximating Closing Line A on La. Exh. 197) on the 4/1/44 edition of Chart 1272.

line A on La. Exh. 197 and more precisely shown on La. Exh. 23A, edition of 8/28/55 (reproduced as Figure 19, *infra*), enclosed a waterbody meeting all juridical bay requirements under Article 7 of the Territorial Sea Convention. (See La. Exhs. 22 and 23A for analysis of effective dates.)

A. The low-water line at the point marking the eastern terminus of the closing line constitutes an identifiable feature at the maximum seaward extension of the South Pass sand spit and is the apex of a coastal salient. (La. Exh. 23A; *Louisiana Brief*, pp. 134-140).

B. The feature marking the western terminus of the closure constitutes an identifiable "minor shore form" related to the headland landform which had historically constituted the western terminus of a well-defined indentation. (1 *Shalowitz* 64; La. Exh. 23A; Figure 5, *supra.*)

C. The penetration of the waterbody enclosed by the subject closing line is in such proportion to the width of its mouth as to enclose landlocked waters. (La. Exhs. 23A, 229, 242; Figure 19.)

D. The water area enclosed by the subject closing line meets semicircle test requirements under the most conservative planimetry delimitation techniques. (La. Exh. 23A; Figure 19.)

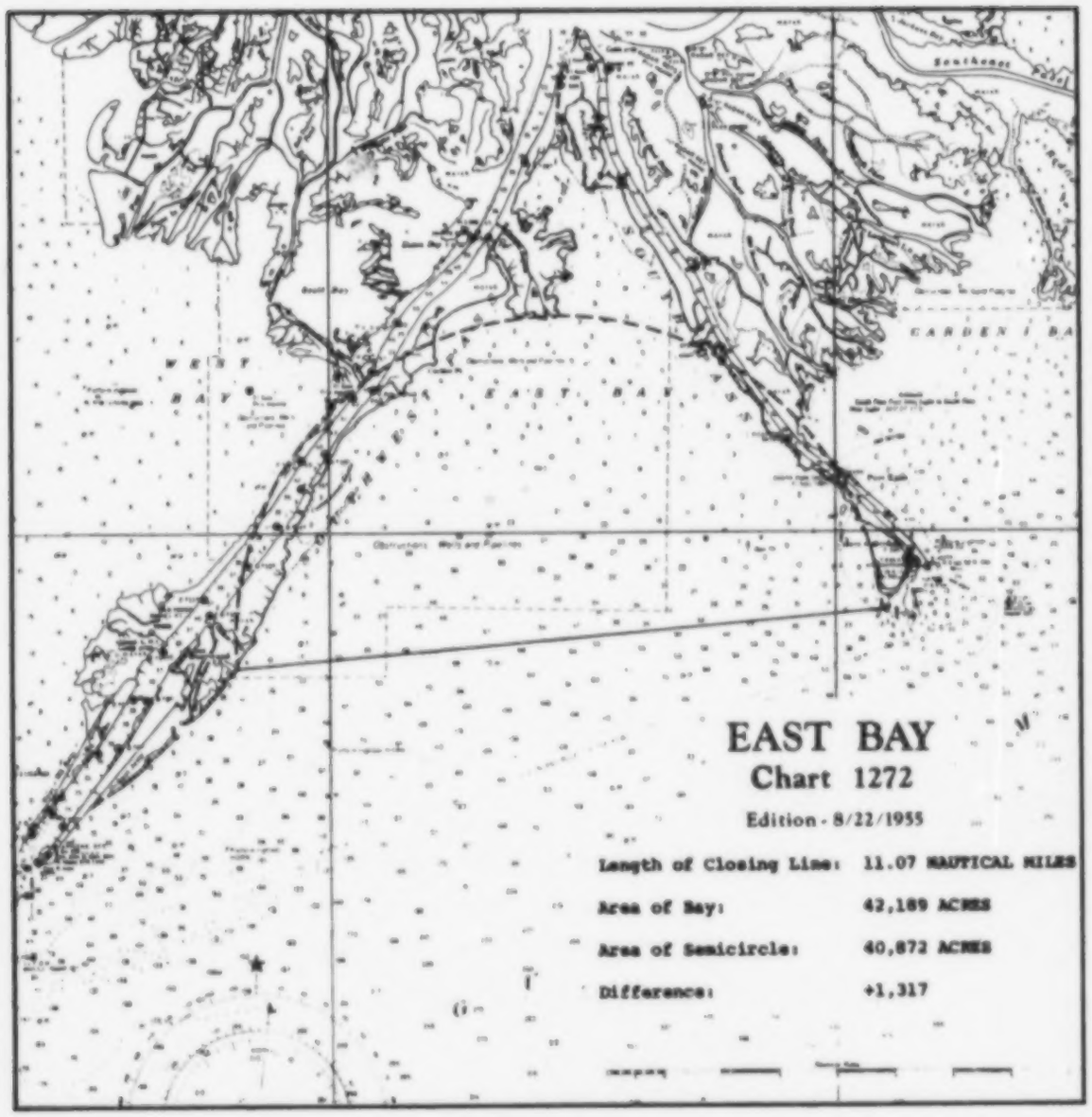


Figure 19. Portion of La. Exh. 23A showing semicircle test data for a juridical bay closure (approximating Closing Line A on La. Exh. 197) on the 8/22/55 edition of Chart 1272.

23. From 9/17/56 to 9/17/62, a line from the northeasternmost tip of the Southwest Pass spit to a point on Cowhorn Island identified by the bisector-of-the-angle method of natural entrance point selection (shown on Figure 20, *infra*) enclosed a waterbody meeting all juridical bay requirements under Article 7 of the Territorial Sea Convention.

    A. Only one pronounced headland is required to define a juridical bay, provided that the indentation otherwise meets all bay requirements under Article 7 of the Convention. (M. Strohl, *The International Law of Bays*, 62-63 (1963); California Supplemental Decree, 382 U.S. 448, 451 (1966); 1 *Shalowitz* 64-65.)

    B. The northeasterly projecting spit at Southwest Pass, to which the closure is drawn in Figure 20, constitutes an apex of a salient and is accordingly an appropriate natural entrance point. (La. Exhs. 23A & 180.)

    C. Cowhorn Island, the low-water feature which is virtually connected to the South Pass natural levee in 1956, existed until at least December 6, 1969 as previously ascertained by the Master and constitutes an appropriate headland landform for the subject closing line. (See Finding 29, *infra*.)

    D. Under the Supreme Court's ruling in the 1966 California Supplemental Decree, the *outermost extension* of the headlands that satisfies all criteria of Article 7 must be selected in

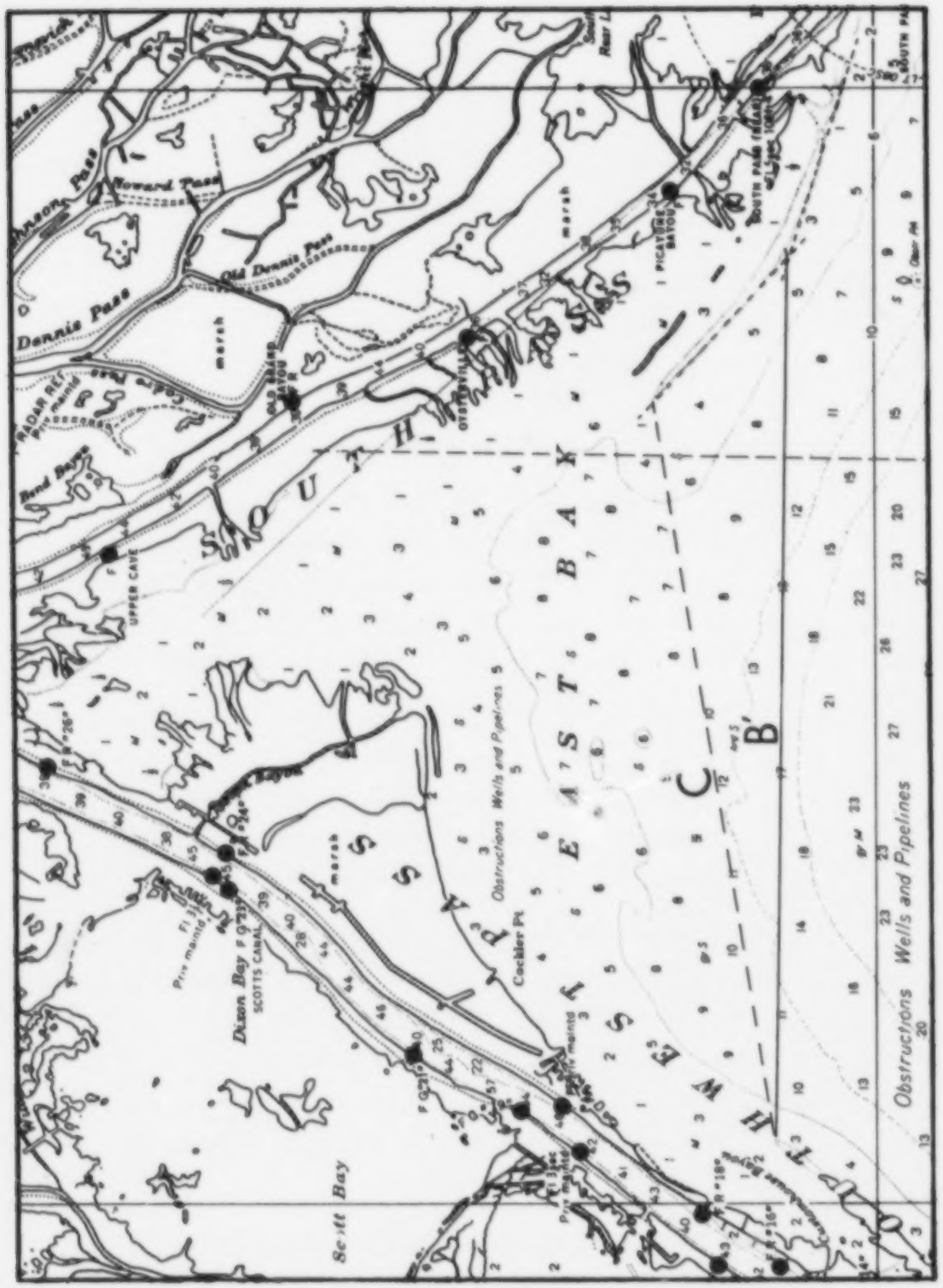


Figure 20. Portion of Chart 1272, edition of 9/17/56, showing closure [C] from La. Exh. 180 and more outward closure [B'] that satisfies all juridical bay requirements expounded by the Master, Article 7 of the Territorial Sea Convention, and the Supreme Court.

order to enclose the maximum juridical bay area. (382 U.S. 448 at 451; also Louisiana Special Master tentative draft, pp. 34 and 38.)

E. In the absence of a pronounced headland, the bisector-of-the-angle method is appropriate. (382 U.S. 448 at 451; 1 *Shalowitz* 64-65; Figure 21 demonstrates the utilization of this natural entrance point selection method elsewhere by the United States in two virtually identical bay situations from evidence submitted in this case.)

F. The point selected at Cowhorn Island on Figure 20 has been appropriately ascertained by the bisector-of-the-angle method, subject of Finding 23.E, *supra*, and described by Shalowitz. (1 *Shalowitz* 64-65.)

G. The penetration of the waterbody enclosed by the subject closing line is in such proportion to the width of its mouth as to enclose landlocked waters. (See Figure 20, *supra*—penetration is even more clearly pronounced for this closure than for that shown on La. Exhs. 180 and 197 (Line C) and recognized by the Special Master, tentative draft, p. 38.)

H. The water area enclosed by the subject closing line [B'] meets semicircle test requirements under the most conservative planimetry delimitation techniques as demonstrated in *Louisiana Memorandum Presenting Addition-*

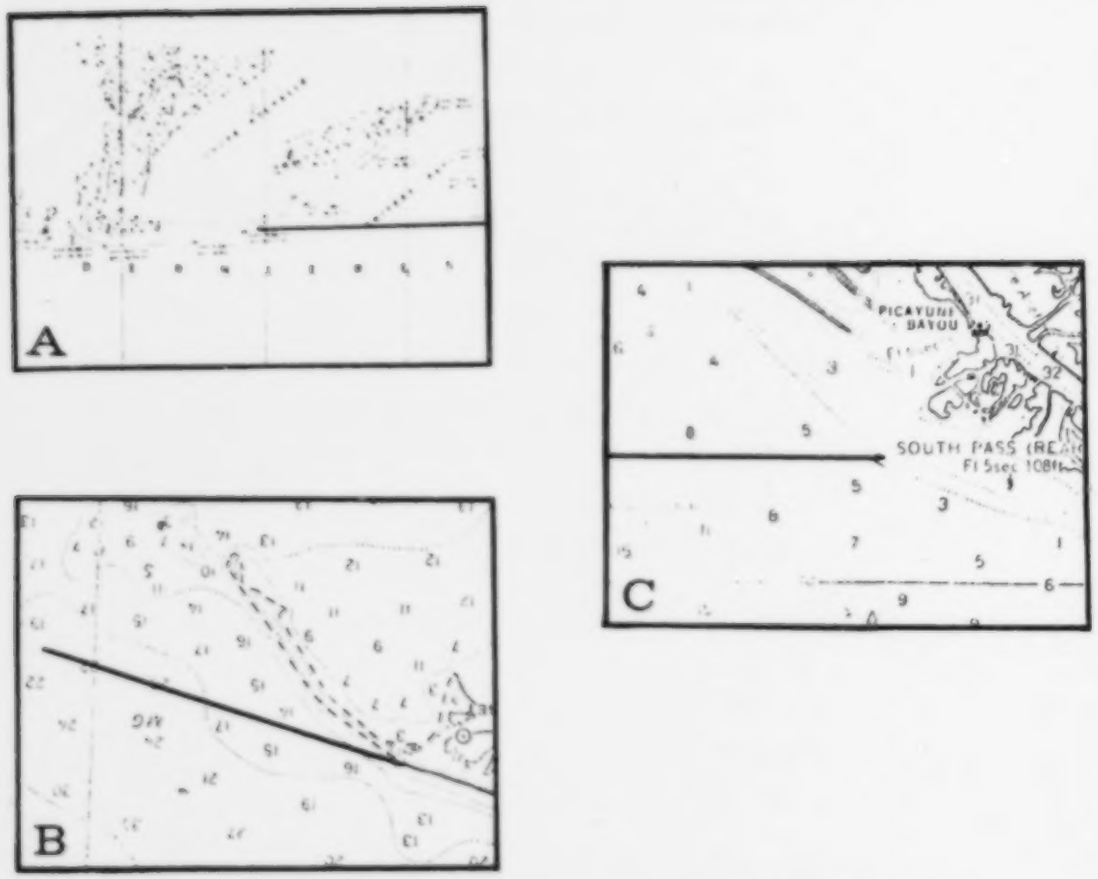


Figure 21. Comparison of natural entrance points selected by the Federal government at (A) Whiskey Pass for the Terrebonne-Timbalier Bay complex (U.S. Exh. 389, Map 19 of 41) and (B) Demarcation Bay, Alaska (U.S. Exh. 416-D, Chart 9478—inverted for comparative purposes) with (C) the natural entrance point proposed by Louisiana and rejected by the Federal government on Cowhorn Island for East Bay. Note relationship of closing line to inward shoreline of island headland landforms in question; waters located landward at Cowhorn Island (C) are more enclosed than either (A) or (B) above.

al Technical Data and Information Requested by the Special Master at the October 29, 1973 Conference, pp. 46-47, the correctness of which

data has been agreed to by the Federal government at p. 18, fn. 12 of their response to Louisiana's memorandum:

> [12] Our calculations show that each of these lines [*B'*, C, and C'] *satisfies the semicircle test.* (Emphasis added.)

24. From 9/17/62 until 12/5/69*, a line from the northeasternmost tip of the Southwest Pass spit to a point on Cowhorn Island identified by the bisector-of-the-angle method of natural entrance point selection (shown on Figure 22, *infra*) enclosed a waterbody meeting all juridical bay requirements under Article 7 of the Territorial Sea Convention.

   A. Findings 23.A through 23.G are equally applicable to the waterbody enclosed by the subject closing line, as configurations are identical along much of the bay's periphery.

   B. Cowhorn Island, the bay's eastern headland landform, is physically attached to the South Pass natural levee (see Figure 22).

   C. The water area enclosed by the subject closing line meets semicircle test requirements under the most conservative planimetry delimitation techniques. [Adding the area of the basic triangle used in Finding 23.H (2460 ac.) to that shown on La. Exh. 180 (14,529 ac.) gives a

*Date of filing Joint Pretrial Statement with the Master in Memphis. (See attached Memorandum.)

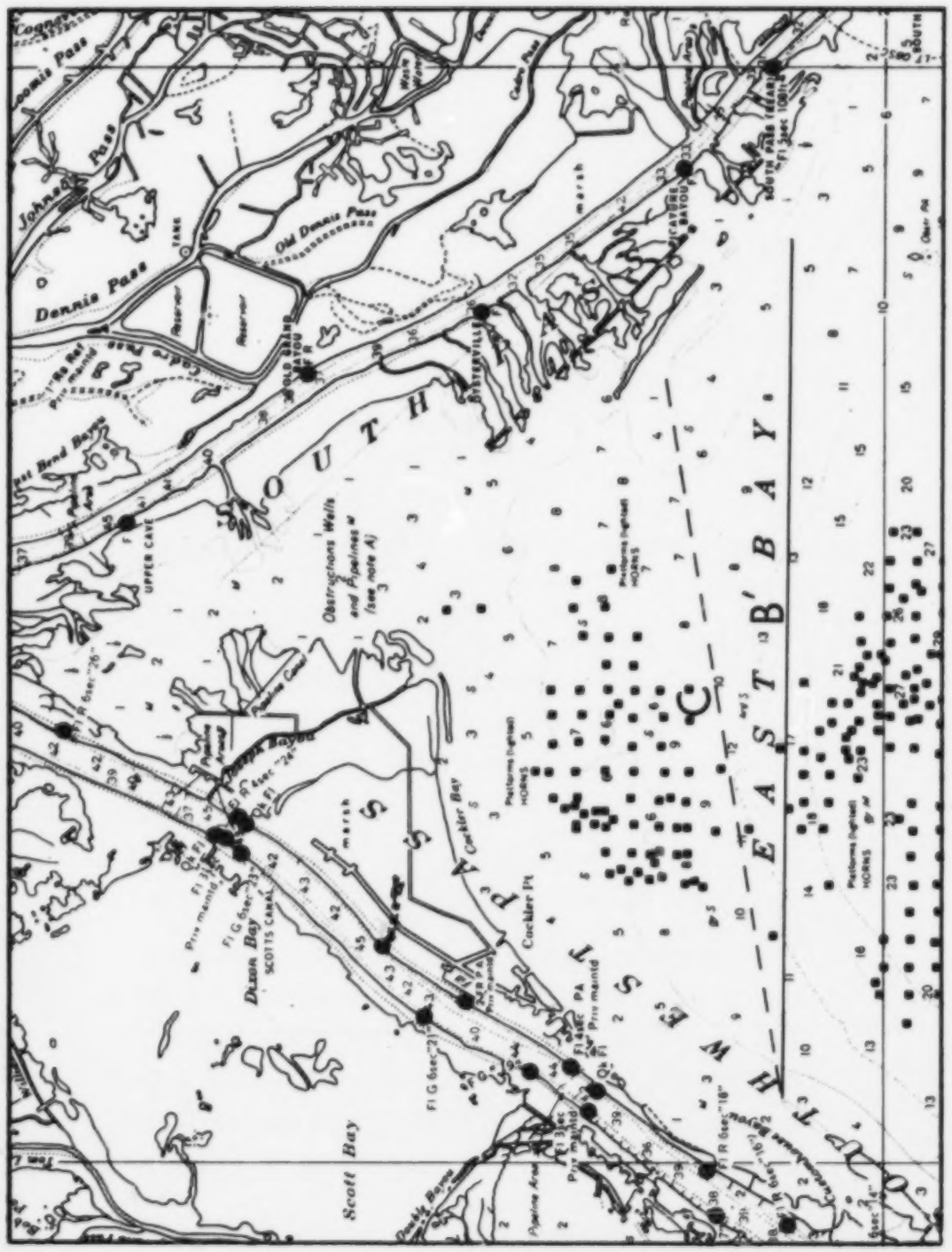


Figure 22. Portion of Chart 1272, edition of 9/17/62, showing closure [C] from La. Exh. 180 and more outward closure [B'] that satisfies all juridical bay requirements expounded by the Master, Article 7 of the Territorial Sea Convention, and the Supreme Court.

bay area of 16,989 acres. The closing line, being the same as in 23.H (7.00 geog. mi.), produces a hypothetical semicircle of 16,315 acres. Thus, the bay exceeds minimum semicircle test requirements by 674 acres.]

25. In the absence of affirmative holdings at Findings 23 and 24, *supra*, from 9/17/56 until 12/5/69, a line from the northeasternmost tip of the Southwest Pass spit to the northwestern terminus of Cowhorn Island (see Figures 20 and 22, also Line C on La. Exh. 197) met all juridical bay requirements under Article 7 of the Territorial Sea Convention. (La. Exhs. 180, 229, 234; Dr. Melamid, tr. 3323-28; Philip Whitaker, tr. 3961-64; Findings 23 and 24.)

26. Mudlump No. 93 (identified on La. Exh. 6, Figure 2 and Figure 5 [reproduced *infra* as Figure 23]), lying just offshore from the South Pass sand spit, is properly assimilable as the eastern headland for various potential East Bay closing lines under principles enunciated by the Supreme Court.

    A. Mudlump No. 93, lying along the axis of the South Pass sand spit, was located approximately 1230′ distant from the terminus of that feature in 1959 (Map 4 of 8). Were it not for the intervening water passage, it would be a part of the spit formation. (La. Exhs. 8, 197, 296; U.S. Exh. 374, Map 4 of 8.)

    B. Growth of the sand spit at South Pass has shown a history of mudlump incorporation as

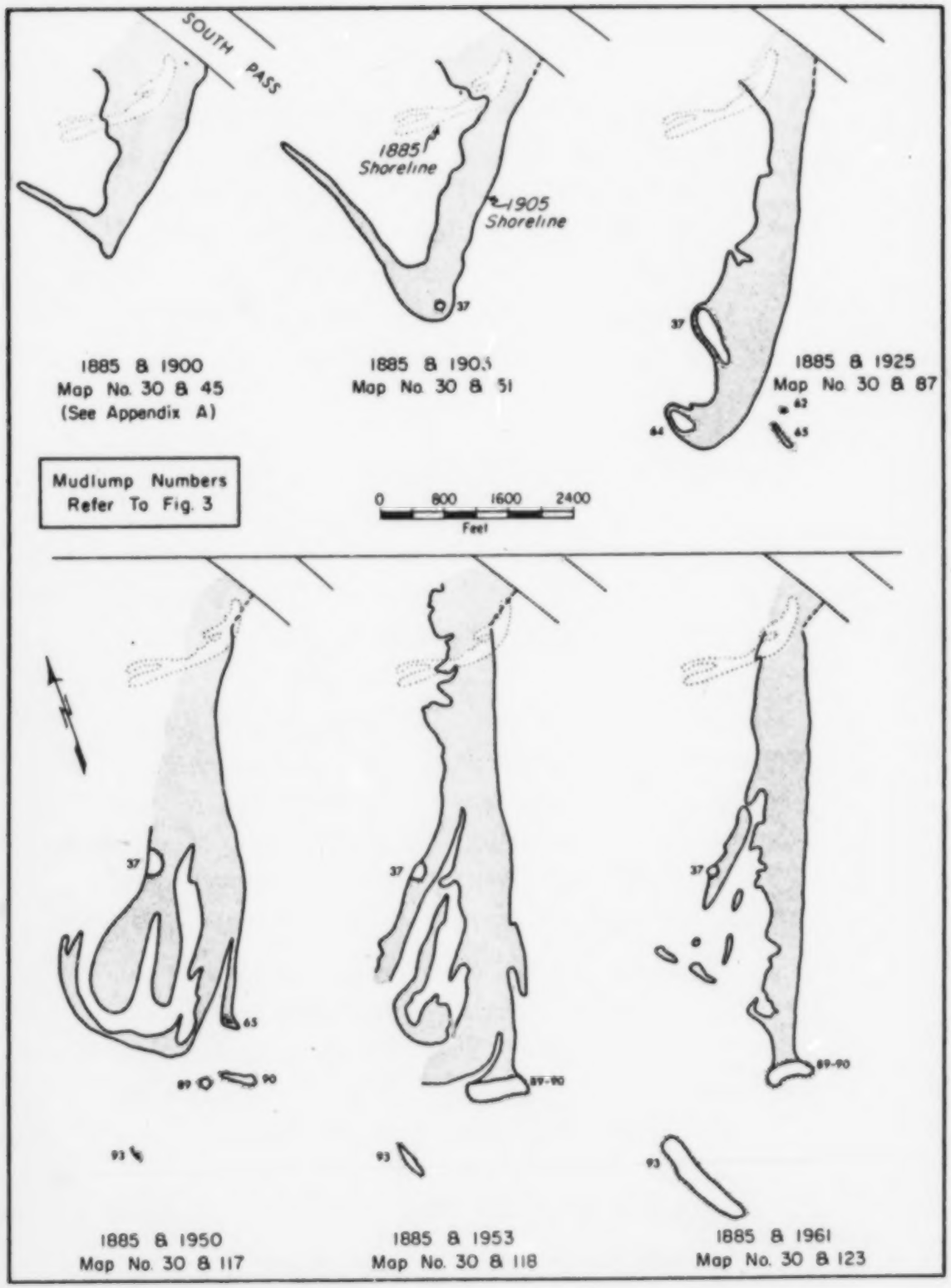


Figure 23. South Pass sand spit development and its relationship to mudlump islands (from La. Exh. 6, Figure 5).

demonstrated by assimilation of Mudlumps No. 25, 37, 47, 64, 65, 71, 89 and 90. (La. Exh. 6, pp. 7-14, especially Figures 2 and 5 [see Figure 23]; La. Exh. 10, pp. 81-84 and Plate 4; La. Exh. 121; Dr. Morgan, tr. 325-27.)

C. Dr. Morgan prognosticated in 1963, based upon his studies from 1948 to 1963, that:

> In the not too distant future it is quite probable that island No. 93 will also become part of the mainland through further extension of the sand spit. (La. Exh. 6, p. 12.)

(See also Dr. Morgan, tr. 326-27.)

D. Despite Hurricane Camille's destruction of the sand spit on August 17, 1969, the feature has largely reconstituted itself, as postulated by Wright, Swaye, and Coleman (La. Exh. 283(13), pp. 14-17) and explained by Dr. Morgan (tr. 6270-80). (La. Exh. 340, photos No. 16-25; La. Exh. 342; *Louisiana Memorandum Presenting Additional Technical Data and Information Requested by the Special Master at the October 29, 1973, Conference*, photographs following p. 34; La. Exh. 10, pp. 78-81.

E. Water depths between the spit and offlying mudlumps are exceedingly shallow and essentially nonnavigable. (La. Exh. 216; U.S. Exh.

200, Vol. VIII, pp. 2-3 and Vol. IX, p. 2, Dr. Morgan, tr. 6276.)

F. Mudlump No. 93 lies along potential East Bay closures and if assimilated, would give the bay a more pronounced "pinched" eastern headland landform. (La. Exhs. 197 and 296.)

27. From 12/5/69* until present, a line from the seaward terminus of mudlump No. 93 at South Pass at x=2,697,850; y=117,200 to a point near the month of Burrwood Bayou, debouching from Southwest Pass at x=2,624,995; y=108,700 (designated Line A on La. Exh. 197) has enclosed a waterbody meeting all juridical bay requirements under Article 7 of the Territorial Sea Convention, provided that Method 3 planimetry delimitation techniques (La. Exhs. 133 and 255) are employed to ascertain the bay area for semicircle test purposes. (See Figure 24.)

A. Mudlump No. 93, lying at the eastern terminus of the closing line, is assimilable to the mainland as a headland and constitutes the apex of the South Pass sand spit salient and the maximum extension of that feature seaward. (La. Exhs. 197 and 296; Finding 25, *supra.*)

B. The feature at the western terminus of the closing line constitutes an identifiable "minor shore form" which is located in the vicinity of a naturally formed headland landform that has historically constituted the western head-

*See note regarding this date at Finding 24.

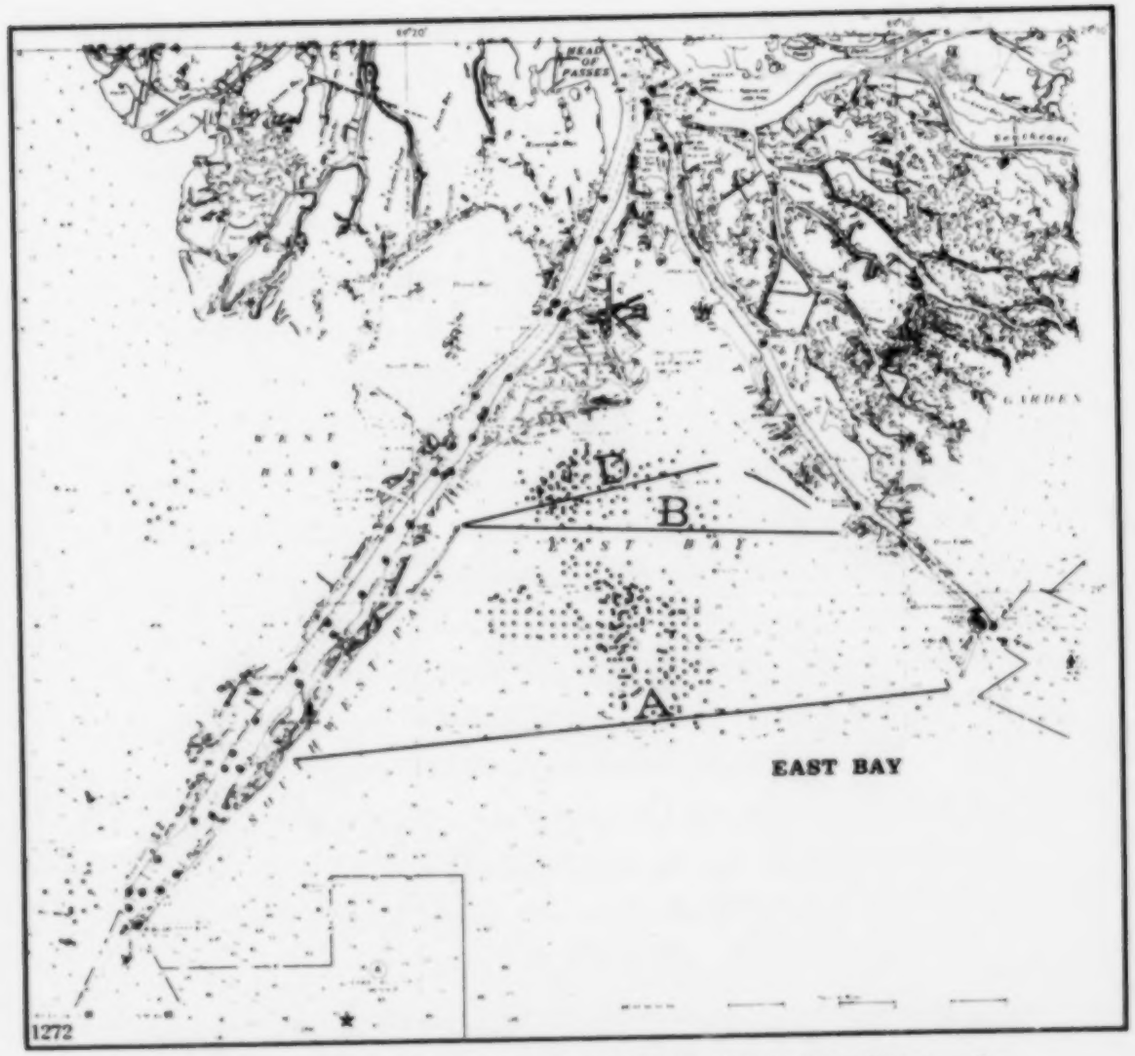


Figure 24. Reduced copy of Chart 1272 (12/6/69 edition—La. Exh. 296) showing the locations of Closing Lines A, B and D. See Figures 20 and 22 for locations of Lines B′ and C. (La. Exh. 197.)

[Note: Termini of closing lines are upon the low-water line, which has not clearly reproduced in this illustration.]

land of East Bay. (La. Exhs. 23A and 197; 1 *Shalowitz* 64; Figure 5, *supra.*)

C. Should Finding 26.B above be answered nega-

tively, the western terminus independently qualifies by application of the bisector-of-the-angle test. (1 *Shalowitz* 64-65; *Louisiana Brief*, Vol. IV, Part 3, p. 136 and Figure E-38 following p. 136.)

D. The penetration of the waterbody enclosed by the subject closing line is in such proportion to the width of its mouth as to enclose land-locked waters. (La. Exhs. 229 and 234.)

E. The so-called "V" shape of East Bay (which is only a reflection of the passes marking the waterbody on the east and west) cannot on this geometric consideration (See numerous shape comparisons in *Louisiana Brief* and *Louisiana Reply Brief*), deprive the indentation of its juridical bay status.

F. East Bay as delimited on Chart 1272 (1968 edition) has a configuration which is *inter fauces terrae*. (Dr. Melamid, tr. 3336; La. Exh. 8.)

G. The bay area exceeds the hypothetical semi-circle area by 403 acres utilizing Method 3 planimetry delimitation techniques. (La. Exhs. 197 and 255; Philip Whitaker, tr. 3961.)

28. From 12/5/69 until present, a line from a salient feature located on the levee of South Pass at x=2,685,325; y=133,800 to the northeasternmost point on the sand spit at Southwest Pass at x=2,-644,940; y=134,910 (designated Line B on La. Exh. 197) has enclosed a waterbody meeting all

juridical bay requirements under Article 7 of the Territorial Sea Convention utilizing all properly includable tributary waters of the bay for area measurement purposes. (See Figure 24, *supra*.)

A. The feature marking the eastern terminus of the closing line, whose apex lies at x=2,685,-325; y=133,800, constitutes an identifiable salient landform. (La. Exhs. 197 and 296; Dr. Melamid, tr. 3324.)

B. The feature marking the western terminus of the closing line at x=2,644,940; y=134, 910 clearly marks the indentation under consideration and constitutes the apex of a pronounced salient. (La. Exhs. 197 and 296; Dr. Melamid, tr. 3323-24.)

C. The penetration of the waterbody enclosed by the subject closing line is in such proportion to the width of its mouth as to enclose land-locked waters. (La. Exhs. 229 and 234; Dr. Melamid, tr. 3321-23.)

D. The bay area exceeds the hypothetical semi-circle area if tributary waters and true islands and low-water elevations within the bay are counted as part of the bay area as directed by the Convention and by the Supreme Court. (See proposed Findings 33 through 36, *infra*; La. Exh. 197; Philip Whitaker, tr. 3960-61.)

29. The existence of Cowhorn Island, first shown on Chart 194 in 1918 and continuously portrayed on official U.S.C. & G.S. Charts 194 and 1272 until

an edition dated December 6, 1969, has not been reasonably disproved. The removal of the feature from official charts after 12/6/69 was at request of Federal counsel and was performed in a manner contrary to the long-standing practice of the U.S.C. & G.S. Marine Chart Division.

A. Cowhorn Island was removed from Chart 1272 on the 24th edition dated 12/6/69 at the request of Hugh Dolan of the NOAA staff and legal adviser for National Ocean Survey. (James Richardson, tr. 5113-14; *Louisiana Brief*, Vol. III, Part 3, pp. 8-18; La. Exhs. 8 and 124.)

B. Such removal was contrary to the long-applied standards of the Marine Chart Division, as no new hydrographic data existed for the area at the time of Cowhorn Island's removal. (Deposition of James Richardson, La. Exh. 123 at pp. 99-100 and 120-125; La. Exhs. 204-216; *Louisiana Brief*, Vol. III, Part 3, pp. 8-18.)

C. Such removal immediately followed the taking of deposition evidence that supported the existence of Cowhorn Island, at least as a low-water feature, and which justified the maintenance of that feature on Chart 1272 for some 10 years subsequent to the 1959 low-water survey leading to the Set of 54 maps in the delta area. (Deposition of James Richardson, La. Exh. 123, taken October 20, 1969;

Chart 1272, December 6, 1969 edition—La. Exh. 124.)

D. The 1970 Federal resurvey of the Cowhorn Island vicinity did not reasonably disprove the existence of the low-water feature under normal conditions. The survey was made in January 1970, only 5 months following passage of Hurricane Camille, "one of the most intense storms in recorded North Atlantic tropical cyclone history" (La. Exh. 283(13), p. 5) through the delta area. Wright, Swaye, and Coleman of the Coastal Studies Institute, commenting on the effects of Camille in the delta area stated:

> Most landforms-certainly most depositional landforms-are primarily the product of normally occurring processes which act with regularity and high frequency. However, occasional catastrophic events may modify a landscape to the extent that normal processes, once they resume, act upon a different set of "initial" conditions. In such a case form-process equilibrium will eventually be regained, but only after changes in the pre-catastrophy morphology have taken place. (La. Exh. 283(13), p. 13.)

Commenting on the destruction of the South Pass sand spit, which formerly connected mud-lumps 89-90 to the mainland, they said:

> With the exception of a few sand

> patches at the extreme eastern end of the spit, the active subaerial beach was completely removed and the sands were redistributed. . . . It may be postulated that rapid reclamation of the spit will be favored by the inshore accumulation of eroded sand at depths shallow enough to enable constructive waves to reform the beach. (La. Exh. 283(13), p. 17.)

Although Cowhorn Island, lying approximately 2 miles north of the spit, was not the subject of this study, it must be assumed that a similar pattern of destruction and rebuilding would occur for that feature. Joseph K. Wilson, photogrammetrist and field inspection supervisor for the National Ocean Survey, corrorated the observations of the Coastal Studies personnel from his own experience stating that surveys made after a hurricane do not fairly reflect the normal conditions of the shore because "the hurricane changes everything" (tr. 4677). (La. Exh. 283(13); Joseph K. Wilson, tr. 4677.)

E. The hydrographic techniques employed in the 1970 Federal resurvey of the Cowhorn Island area did not reflect normal charting hydrography techniques and cannot be said to have reasonably disproved the existence of that feature. Only *one sounding* was made at the location of the feature (6B) and recorded on U.S. Exh. 200. This single sounding showed that

at the "mean" level of the bay, the portion of Cowhorn Island at the site of the sounding was covered by only 0.2 foot, *less than 2½ inches*, of water and that because of "moderate swells," the feature actually was exposed by the same amount (0.2 foot) between "swells." (U.S. Exh. 200, Survey Area 6, pp. 1 & 4; Deposition of James Richardson, La. Exh. 123; and James Richardson, tr. 4947, *et seq.*, concerning proper charting techniques and elements of hydrographic surveying.)

30. In the absence of affirmative holdings at Findings 27 and 28, a line from the northeastern terminus of the Southwest Pass spit at x=2,644,940; y=134,910 to a point on the low-water line of Cowhorn Island located by the bisector-of-the-angle method (approximately the line designated B' on Figures 20 and 22 at Findings 23 and 24) encloses a waterbody which has qualified as a juridical bay under Article 7 of the Convention from 12/5/69 until the present. (See elements of Findings 23 and 24 *supra*, which are equally applicable to this Closing Line and Finding 29, *supra*; La. Exh. 197, Closing Line C; La. Exh. 296.)

31. In the absence of an affirmative holding at Finding 30, *supra*, a line connecting the termini of the Southwest Pass sand spit (x=2,644,940; y=134,910) and Cowhorn Island (x=2,677,650; y=138,050) encloses a waterbody which has qualified as a juridical bay under Article 7 of the Con-

vention from 12/5/69 until present. (See Finding 31, *supra*; La. Exh. 197, Closing Line C.)

32. In the absence of an affirmative holding at Finding 31, *supra*, a line joining the coordinates x=2,644,940; y=134,910 and x=2,672,315; y=141,745 (see Figure 24, Line D, *supra*) encloses a waterbody meeting all juridical bay requirements under Article 7 of the Convention. (La. Exh. 197, Closing Line D; Dr. Melamid, tr. 3321-30; Philip Whitaker, tr. 3964-65.)

33. If a waterbody otherwise qualifies as a bay, *i.e.*, is a well-marked indentation of the coast with identifiable headlands and sufficient penetration to constitute more than a mere curvature of the coast, then a conservative delimitation or interpretation of water area for semicircle test should not be allowed to defeat the juridical bay status of that waterbody.

A. A. L. Shalowitz in *Shore and Sea Boundaries*, Vol. I, p. 40, discusses the effects of applying the semicircular rule to indentations possessing the "configuration and characteristics" of a bay as follows:

> But beyond this is the overriding consideration that the bay would be inland waters under the general principle laid down in the North Atlantic Coast Fisheries Arbitration (*see* text at note 3 *supra*), and no technical method is required to determine its status. The semicircular rule was devised to provide more

> specific criteria than were supplied by the arbitration; in no case should it operate as a contraction of the principle there established. Therefore, those indentations that possess the "configuration and characteristics," referred to in the arbitration would be classified as inland waters anyway. It is only those for which it may be difficult to determine whether the "configuration and characteristics" are present that more specific criteria are proposed. In other words, the technical method begins where the arbitration left off.

B. The Supreme Court has held at Ascension Bay in the *Louisiana Boundary Case*, 394 U.S. 11, 52-53 (1969), that a liberal delimitation of the bay's water area for semicircle test measurement purposes is required.

> Article 7(3) provides that for the purposes of calculating the semicircle test, "[i]slands within an indentation shall be included as if they were part of the water areas of the indentation." The clear purpose of the Convention is not to permit islands to defeat the semicircle test by consuming areas of the indentation. We think it consistent with that purpose that islands should not be permitted to defeat the semicircle test by sealing off one part of the indentation from the rest. Treating the string of islands "as if they were part of the water areas" of the single large indentation

within which they lie, "Ascension Bay" does meet the semicircle test.

C. In a similar analysis of factual island/tributary water area measurement problems in West Bay, the Supreme Court in its 1969 Opinion again required a liberal interpretation of what areas should be included within that bay for semicircle test calculations.

> We think the same result follows in West Bay, where the areas which the United States seeks to exclude from the bay are set off only by strings of islands. See n. 65, *supra*. Accordingly, should the closing line urged by Louisiana be accepted, it will not be defeated by the semicircle test. (394 U.S. 11, 53 n. 71.)

D. The language of the Territorial Sea Convention Article 7(3) supports following the low-water line wherever it might lead into subindentations, up estuarine tidal channels, and around islands and mudflats or other low-water features to the extent that the full indentation is tested, or at least to the point at which such measurement is no longer necessary (*e.g.*, see notes on La. Exhs. 23A, 26, 104, 180, 194, and 198).

> 3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the identation and a line joining

> the low-water marks of its natural entrance points.

E. This interpretation is affirmed in the principles enunciated in the Thames Estuary Case (*Post Office v. Estuary Radio, Ltd.*), 3 All E.R. 663 (1967), in which tributaries of the Thames were to be followed "so far as the tide flows and reflows" in measuring the water area of the indentation for semicircle test purposes (at 674). (La. Exh. 283(17).)

34. All islands and low-water elevations (as defined in Articles 10 and 11 of the Territorial Sea Convention) lying between the low-water mark around the shore of East Bay and a line joining natural entrance points of that waterbody should be included as if they were part of the water area of the indentation for purposes of measurement as provided by Article 7(3) of the Convention.

A. It was the clear intention of the Convention's redactors to treat all islands within an indentation as water area for purposes of calculating semicircle test data.

> 11. Mr. FRANCOIS (Special Rapporteur) drew attention to the second and third sentences of paragraph 2. The third sentence, which read: "Islands within a bay shall be included as if they were part of the water area of the bay" would enable any indentation to be considered as a bay provided its depth was at least half

the closing line, even though some of the area within the bay was covered by islands rather than by sea. If a provision of that type were not included, the water area would be reduced and in certain cases might not be equal to the area of a semi-circle drawn on the entrance of the indentation—the criterion laid down for a bay in the opening sentences of paragraph 2, a criterion moreover which corresponded to the text adopted at the 317th meeting on the proposal of Mr. Garcia Amador.

(1 *Yearbook of the International Law Commission* 214-215, 319th Meeting, June 24, 1955.)

B. Recognition that islands within an indentation emphasize the inland character of its waters further supports treating *all* islands which lie within the indentation as water for area measurement purposes, regardless of island origin or configuration.

13. Mr. SANDSTROM pointed out that the presence of islands actually emphasized, from a geographical point of view, the inland character of the waters within the bay.

(1 *Yearbook of the International Law Commission* 215, 319th Meeting, June 24, 1955.)

C. The Supreme Court recognized this principle in its 1969 Opinion in this case.

Article 7(3) provides that for the purposes of calculating the semicircle test, "[i]slands within an indentation shall be included as if they were part of the water areas of the indentation." The clear purpose of the Convention is not to permit islands to defeat the semicircle test by consuming areas of the indentation. (394 U.S. 11, 53.)

D. The Supreme Court has held in factual situations in this case that strings of islands surrounding waters should not segregate those waters from the primary indentation for measurement purposes, regardless of the degree of enclosure. (394 U.S. 11, 52-53 — see Findings 33.B and 33.C, *supra*.)

E. Spoil islands, regardless of their proximity to the shore, must be counted as water area for semicircle test purposes in order to maintain consistency with the 1969 Supreme Court Opinion (394 U.S. 11, 40-41, fn. 48, relating to treatment of spoil banks at Pass Tante Phine).

F. Bifurcation middle ground islands should not be excluded as water area for semicircle test measurement purposes because of their fluvial origin. These features have *never* constituted a part of the mainland; their formation at the mouths of streams entering a standing body of water precludes this. If erosional islands (those formed by the deterioration or erosion of former land areas) are permitted to be

counted as water area, the fluvial islands, which have no former connective relationship with the mainland, *a fortori* should be counted as water area. (Figure 6, *supra*; Dr. Morgan, tr. 84-85 & 92-94; La. Exh. 7, GP-9.)

35. All bodies of water that are tributary to East Bay (as opposed to being more clearly tributary to a different waterbody) should be included as part of that bay's water area for measurement purposes.

A. A. L. Shalowitz recognized that the area of the whole indentation, including tributary waterbodies, should be used for comparison with the hypothetical semicircle in applying the semicircular rule to an indentation.

> In the application of the semicircular rule to an indentation containing pockets, coves, or tributary waterways, *the area of the whole indentation (including pockets, coves, etc.)* is compared with the area of a semicircle. If the indentation meets the test, a closing line is drawn across the headlands. But if it fails to satisfy the test and the indentation becomes open sea, the semicircular rule should still be applied to any of the tributary waterways for the purpose of determining their status as inland waters. (1 *Shalowitz* 219-20. Emphasis added.)

B. The principle of including subordinate waterbodies within the primary indentation for area

measurement purposes has been recognized by the Supreme Court and by The Geographer of the State Department. (394 U.S. 11, 50-53; La. Exh. 153, p. 13.)

C. Just as islands should not be permitted to consume areas of an indentation and thereby defeat the inland status of that waterbody under application of the semicircle test (394 U.S. 11, 53 — see Findings 34 and 35, *supra*), neither should exclusion of tributary waters which can reasonably be included for area measurement purposes be allowed to defeat the inland status of a waterbody otherwise qualifying as a juridical bay. (See Finding 34, *supra*.)

D. The *Thames Estuary* case provides precedent for utilizing tributary estuarine features adjoining the primary indentation in calculating the area of an indentation. (La. Exh. 283 (17).)

E. The water areas which Louisiana seeks to include as a part of East Bay's water area under Method 2 bay delimitation are tributary to *nothing* but East Bay. (La. Exhs. 8, 133, and 197.)

F. The inlets, both artificial and natural, into East Bay which Louisiana seeks to include in the primary indentation's area are all subject to influx of both saline, marine water and fresh, fluvial water. (Dr. Morgan, tr. 6311-26.)

G. Closing tributary waters off from the remaining waters of East Bay by a line across their mouths is equally as arbitrary from a legal standpoint as segregating them by a line across their heads. (Master's tentative draft, p. 36.)

H. The outer (bay) portion of the major distributary natural levees is more irregular than the inner (channel) portion. Consequently, delimiting closures along the bay boundary allows more subjective interpretation than along the channel boundary. (La. Exhs. 8, 133, and 197.)

I. Failure to include fluvial islands and tributary channels contiguous with waters of East Bay would allow that waterbody, while meeting all other juridical bay requirements, to fail to meet semicircle test requirements at Line B on the Set of 54 Maps by only 820 acres and would thus deprive the waterbody of its inland status at that closing line. (La. Exh. 197.)

36. The Joseph Bayou landform has shown a history of deterioration over the past two decades. Much information was introduced into the record of this case *prior to briefing* which substantiates massive deterioration in this area.

A. Joseph Bayou originated as a crevasse in the east bank of Southwest Pass prior to 1918 and substantially had completed construction of its subdelta into East Bay by the mid-1950s.

(La. Exh. 23; Dr. Morgan, tr. 414, 417, 419-21, 430, 432, 2686-88.)

B. Subdeltas within the Mississippi River delta have shown cyclic growth characteristics as explained at Finding 8.D, *supra*. Joseph Bayou is in the deterioration phase, demonstrating extensive loss of land. (La. Exhs. 4 & 5; Dr. Morgan, tr. 6291-6307.)

C. As in the West Bay subdelta, canalization of the Joseph Bayou landform has substantially augmented deterioration of that landform. (Alan Ensminger, tr. 767-69 and 783-801; Dr. Morgan, tr. 2366-70; La. Exhs. 8, 299, and 341.)

D. Abundant evidence in the record prior to the filing of the *Louisiana Memorandum Presenting Additional Technical Data and Information Requested by the Special Master at the October 29, 1973 Conference* in November 1973 substantiates the rapid deterioration of the Joseph Bayou subdelta. See Figures 25 and 26, *supra*, for examples of evidence in the record. (La. Exhs. 8, 9 [photos 32-41], 33-35, 193Y-AB, 299, 341 [31 photographs in one exhibit], 343; testimony of Alan Ensminger and Dr. Morgan; *Louisiana Brief*, Vol. III, Part 3, pp. 44-57.)

E. The area of the Joseph Bayou landform lying north of Joseph Bayou is characterized on charts by large ponded areas separated from

Figure E-10. From Louisiana Brief, Vol. III, Part 3, following page 52.

Figure 25. Deteriorating landform in Joseph Bayou. From La. Exh. 343 [inadvertantly numbered 383 in original filing].

Figure E-5. From Louisiana Brief, Vol. III, Part 3, following page 52.

Figure 26. Joseph Bayou Area. Note open water link to main area of East Bay. La. Exh. 9, Photographs #34, 36.

other waters within East Bay by only narrow strings of islands and peninsulas of land. (Evidence in the record shows this area to have much greater connection with East Bay than indicated on current charts, however—compare Figure 26 with the Joseph Bayou area on La. Exh. 8.) This is factually equivalent to the relationship Bob Taylor's Pond bears to West Bay; the Supreme Court held (394 U.S. 11, 50 n. 65, 53 n. 71) that waters of this pond are to be included in the area of West Bay for area measurement purposes. Waters north of Joseph Bayou (if not the entire "landmass" consisting of insular formations) should similarly be held to constitute a part of East Bay's water area.

From Dead Womar Pass to North Pass (Bucket Bend Bay)

37. The low-water elevations lying at the mouth of North Pass constitute an integral part of the mainland for purposes of delimiting the southern terminus of Bucket Bend Bay under principles enunciated by the Supreme Court (394 U.S. 11, 65-66) and adopted by the Florida Special Master.

    A. The low-water elevations in question lie along the axis of the northern natural levee of North Pass and are aligned with that feature. Were it not for the intervening waters, the elevations would be a part of that formation. (La. Exh. 8; U.S. Exh. 389, Map 2 of 8; testimony of Dr. Melamid, tr. 3270-71; Figure 27, *infra.*)

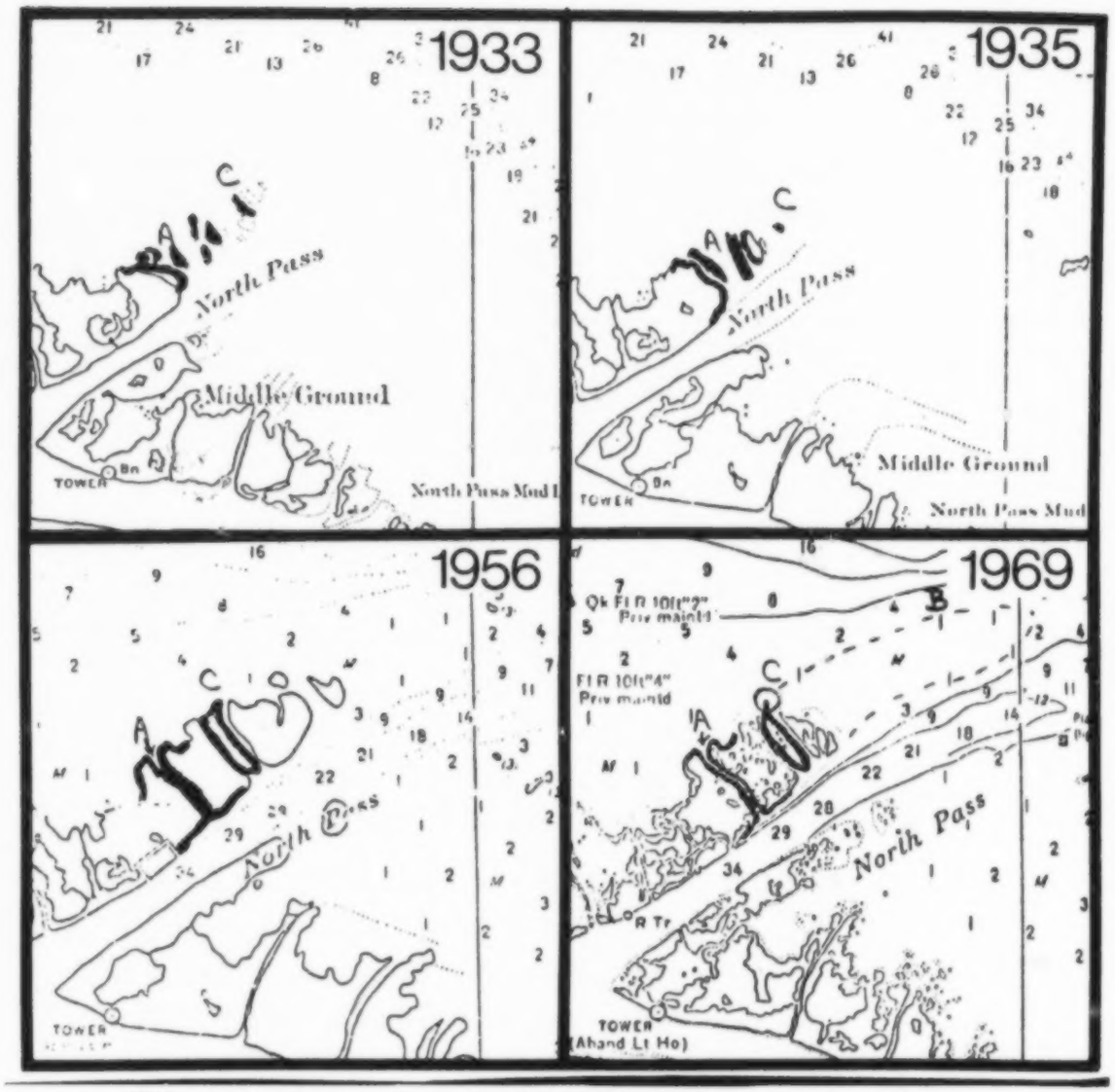


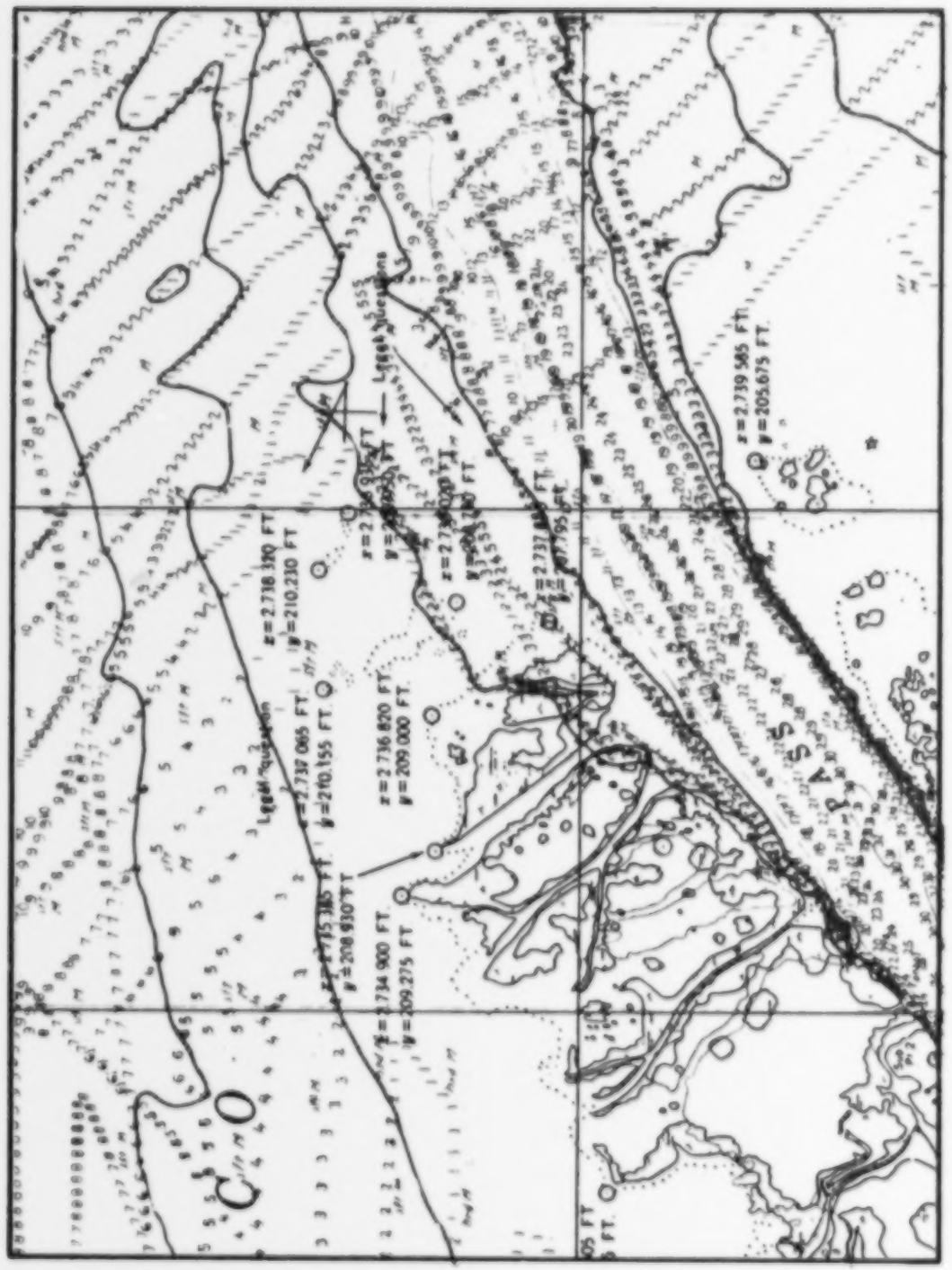
Figure 27. Comparison of 1933-1969 nautical chart configurations at North Pass showing natural progradational assimilation of low-water elevations and islands along the submarine natural levee through time (at A and C). Dashed line (labeled B) shows approximate 2′ bathymetric contour outlining the extremely shoal portion of the submarine levee.

B. Comparison of various editions of Chart 1272 (1933-La. Exh. 162; 1935 - La. Exh. 164; 1956 - La. Exh. 168; and 1970 - La. Exh. 293) indicates that similar low-water elevations and islands have occupied equivalent positions at the tip of the North Pass levee at past times (Figure 27). Careful study of the above charts show that as the pass progrades, these low-water elevations are built above the surface as islands and incorporated into the subaerial natural levee as part of the mainland. This is substantiated by testimony and exhibits of Dr. Morgan. (Tr. 84-98; La. Exhs. 7, GP-9 to 15.)

C. According to the latest hydrographic survey, less than 1′ (one foot) water depths surround the elevations in question. Figure 28 is an overlay of the 1940 hydrographic survey (La. Exh. 344) over a portion of Map 2 of 8 (U.S. Exh. 374) to facilitate this comparison.

D. Distance between the mainland and the closest of the two primary elevations is less than 600′; distance between the above elevation and outermost elevation is less than 1000′; distance from the mainland to outermost elevation is less than 1900′. (U.S. Exh. 374, Map 2 of 8—see base for Figure 28.)

E. At Florida Bay Judge Maris held that low-water elevations lying a minimum of 4000′ from the closest land above high water (which


Legal Position
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itself is an island) are assimilable to the mainland for delimiting a potential overlarge bay 24-mile baseline. (*Report of Albert B. Maris, Special Master* in *United States v. Florida*, No. 52, Original—see Figure 29 for a factual comparison with the North Pass situation.)

38. The waterbody enclosed by a line between x=2,708,835; y=221,440 at Dead Woman Pass and x=2,738,320; y=210,230 at North Pass meets all juridical bay requirements of Article 7 of the Territorial Sea Convention, assuming Finding 37 to be valid.

    A. The area defined above has sufficient depth of penetration in proportion to width of mouth to contain landlocked waters. (La. Exhs. 229 and 231.)

    B. The termini of the above line (at the coordinate-described points) constitute maximum extensions of land into the water and apexes of salients of the coast. (Dr. Melamid, tr. 3270-71.)

    C. Utilizing properly included tributary waters, such as Bull Bay and Paddy Bay, the area of Bucket Bend Bay exceeds the area of the hypothetical semicircle, having for its termini, x=2,708,835; y=221,440 and x=2,738,320; y=210,230. (La. Exhs. 26 and 26A; U.S. Exh. 349, Sheet 2, Line AC; Philip Whitaker, tr. 3948-55.)

39. All alternative lines lying seaward of the feder-

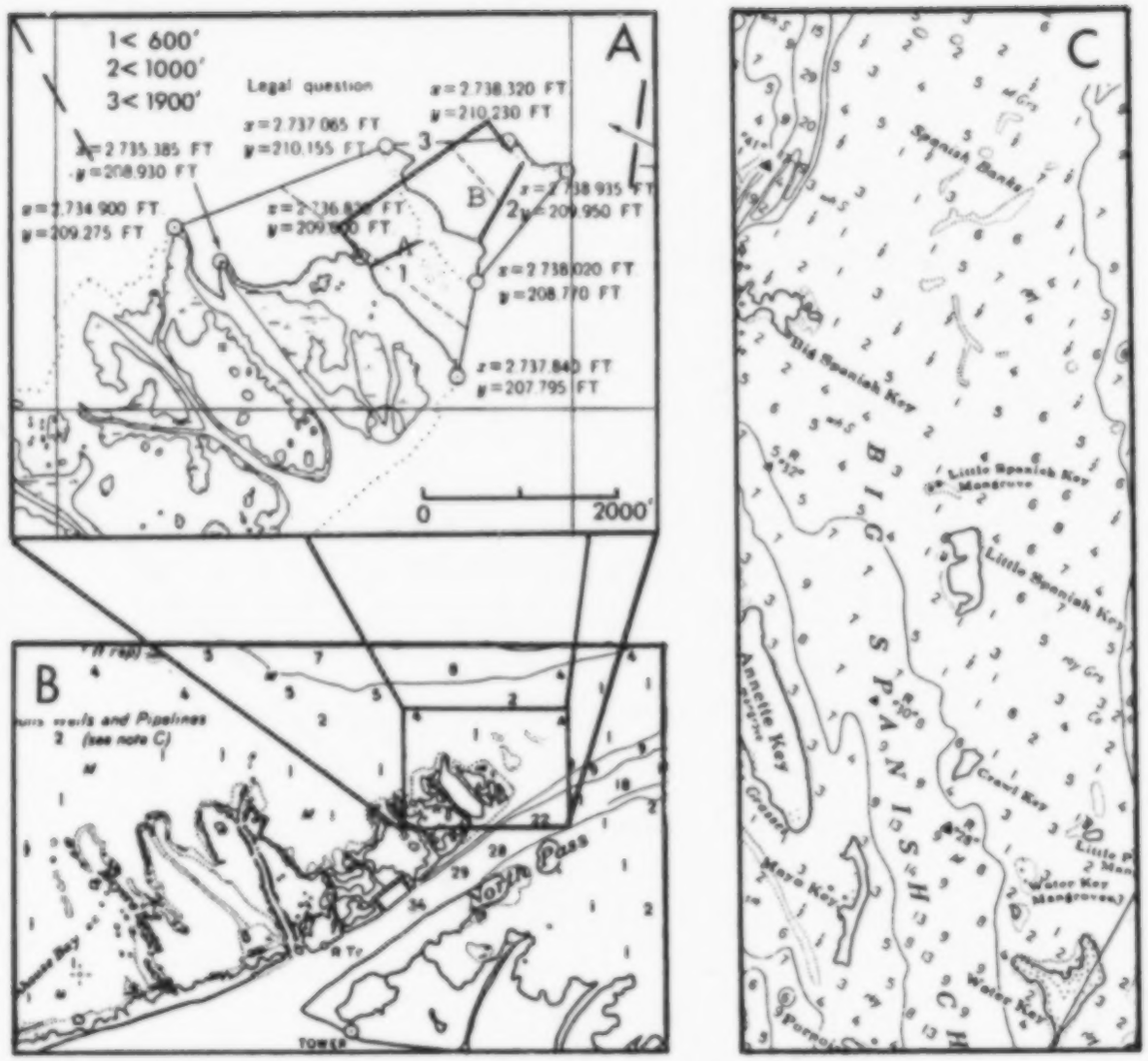


Figure 29. Comparison of distance and water depth facts at North Pass (A & B) with Florida Bay area (C). Scale of A is 1:20,000, while B and C are 1:80,000. (A from U.S. Exh. 349, with markings; B and C are from Charts 1272 and 1251, respectively.)

[Note: Scales indicated have been modified for reproduction of this illustration.]

ally recognized minimum juridical bay extent (Line BE, U.S. Exh. 349) are defined by identifiable points that bear a relationship to the indentation, contain landlocked waters as ascertained from the depth of penetration, and meet semicircle test requirements using properly included tributary waters. (U.S. Exh. 349, Sheet 2; Dr. Melamid, tr. 3270-74; Philip Whitaker, tr. 3948-55.)

From Pass A Loutre to Southeast Pass, Including Blind Bay

40. The mudlump islands and low-water elevations lying along the seaward extension of the Pass a Loutre submarine natural levee are assimilable to, and therefore constitute an integral part of, the mainland for juridical bay delimitation purposes.

A. Growth of Pass a Loutre has demonstrated a history of mudlump incorporation, as evidenced by the designation of Thomasin Lumps on Map 2 of 8 (U.S. Exh. 374) and current Chart 1272 (La. Exh. 8).

B. Testimony of Dr. Morgan concerning mudlump origin and distributary progradation charts in the record explain and substantiate this history of incorporation. (La. Exhs. 159, 167, 296—see Figure 30 for reproductions of these charts; La. Exhs. 6 and 10; tr. 338-339, 342-343.)

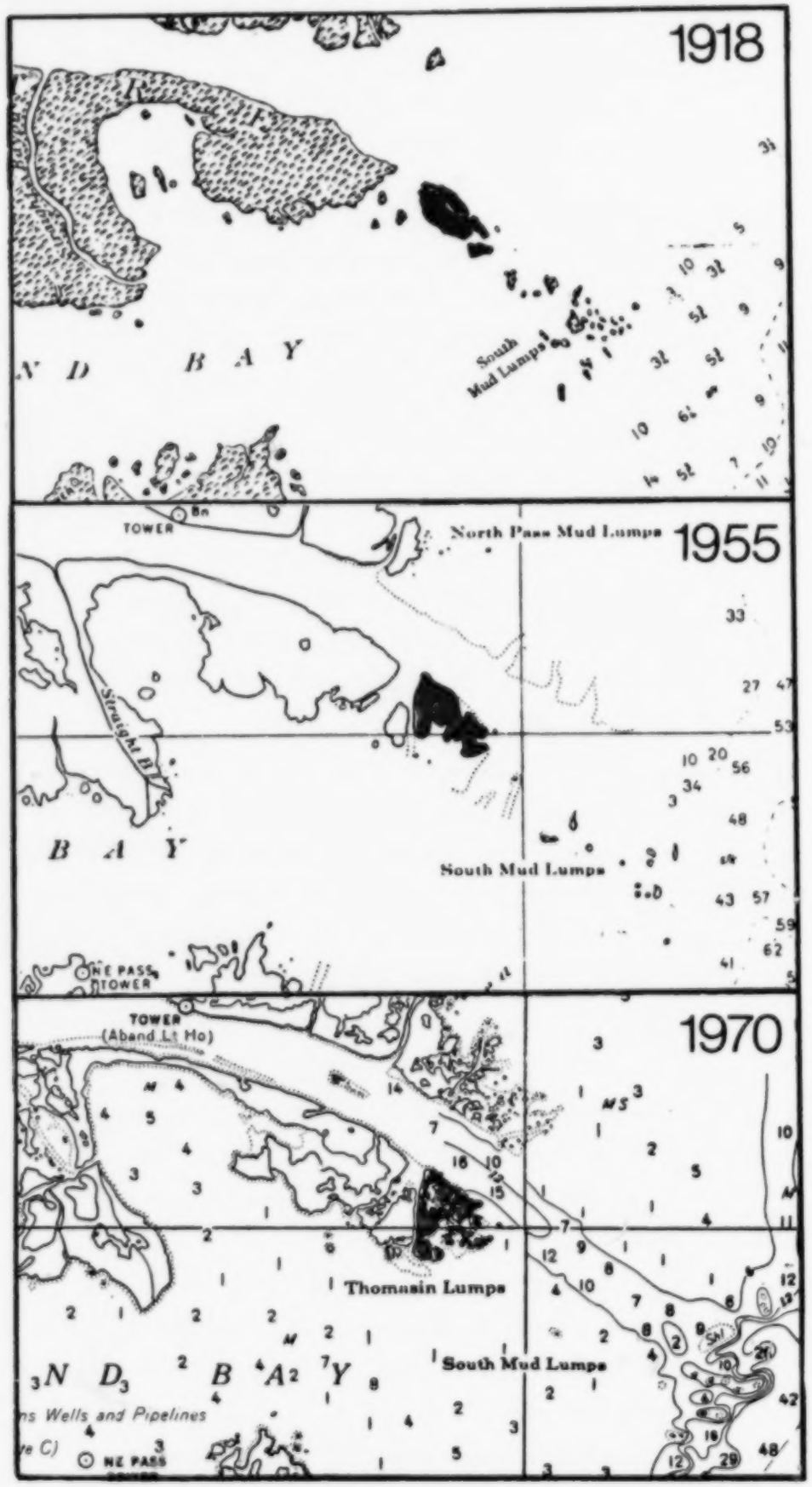


Figure 30. Natural assimilation of mudlump islands through progradation of Pass a Loutre (Chart 1272—editions of 1918, 1955, and 1970.

C. The factual circumstances of mudlump location at Pass a Loutre relate closely to those of *The Anna* case. (*Louisiana Reply Brief*, Figure 80B, following p. 80; La. Exhs. 10, 12, 13-17, 25, 340, and 344; U.S. Exh. 374, Map 2 of 8.)

D. Water depths lying along the Pass a Loutre submarine natural levee, which connects the mainland and offlying mudlumps, are exceedingly shallow and nonnavigable, ranging from less than 1′ to 4′; average depth is less than 2′. (La. Exh. 344, a portion of which is reproduced as Figure 31.)

41. Assuming the validity of Finding 40 that the mudlumps at Pass a Loutre are an integral part of the mainland and assuming the same to be true for mudlumps lying off Southeast Pass (see Finding 16, below), the waterbody enclosed by a line from x=2,751,045; y=181,305 to x=2,726,105; y=148,530 meets all juridical bay requirements of Article 7 of the Territorial Sea Convention.

A. The above-designated points constitute apexes of salient coastal features and are the maximum extensions of the land into the sea. (La. Exh. 8; Dr. Melamid, tr. 3303-04.)

B. The enclosed waters are landlocked, as ascertained from the deep penetration inland in the vicinity of Blind Bay on Map 2 of 8. (U.S. Exh. 374; La. Exh. 353.)

C. The enclosed waters meet semicircle test re-

Figure 31. Portion of La. Exh. 344 showing extremely shallow water depths (1 to 4 feet) separating offlying mudlump islands from the mainland and and overlying the Pass a Loutre submarine natural levee.

quirements. Although this is obvious by visual inspection of the indentation, figures in Louisiana's 1968 Brief, p. 180, fn. 172, indicate that the bay area exceeds that of the hypothetical semicircle by 1000 acres.

From Southeast Pass to South Pass, Including Garden Island and Redfish Bays

42. The mudlumps located off the mouth of Southeast Pass are so closely aligned with the mainland as to be considered as integral part of that landform.

A. The mudlumps located off the seaward terminus of Southeast Pass lie along the axis and are aligned with that feature. (La. Exh. 8; U.S. Exh. 374-Map 3 of 8.)

B. The mudlumps at Southeast Pass, as at Pass a Loutre and other major delta distributaries, constitute porticos to the mainland. (Dr. Morgan, tr. 350-51; La. Exh. 25.)

C. Were it not for intervening waters between the mudlump islands and the islands and the mainland, they would constitute an integral part of the Southeast Pass natural levee landform. (La. Exhs. 8, 12, and 346; Dr. Morgan, tr. 241.)

D. Mudlump islands at Southeast Pass, as at the other passes, have become incorporated within the natural levee marshland as the pass prograded. See Figure 32 for comparison of charts dated 1838 to 1909 showing this incor-

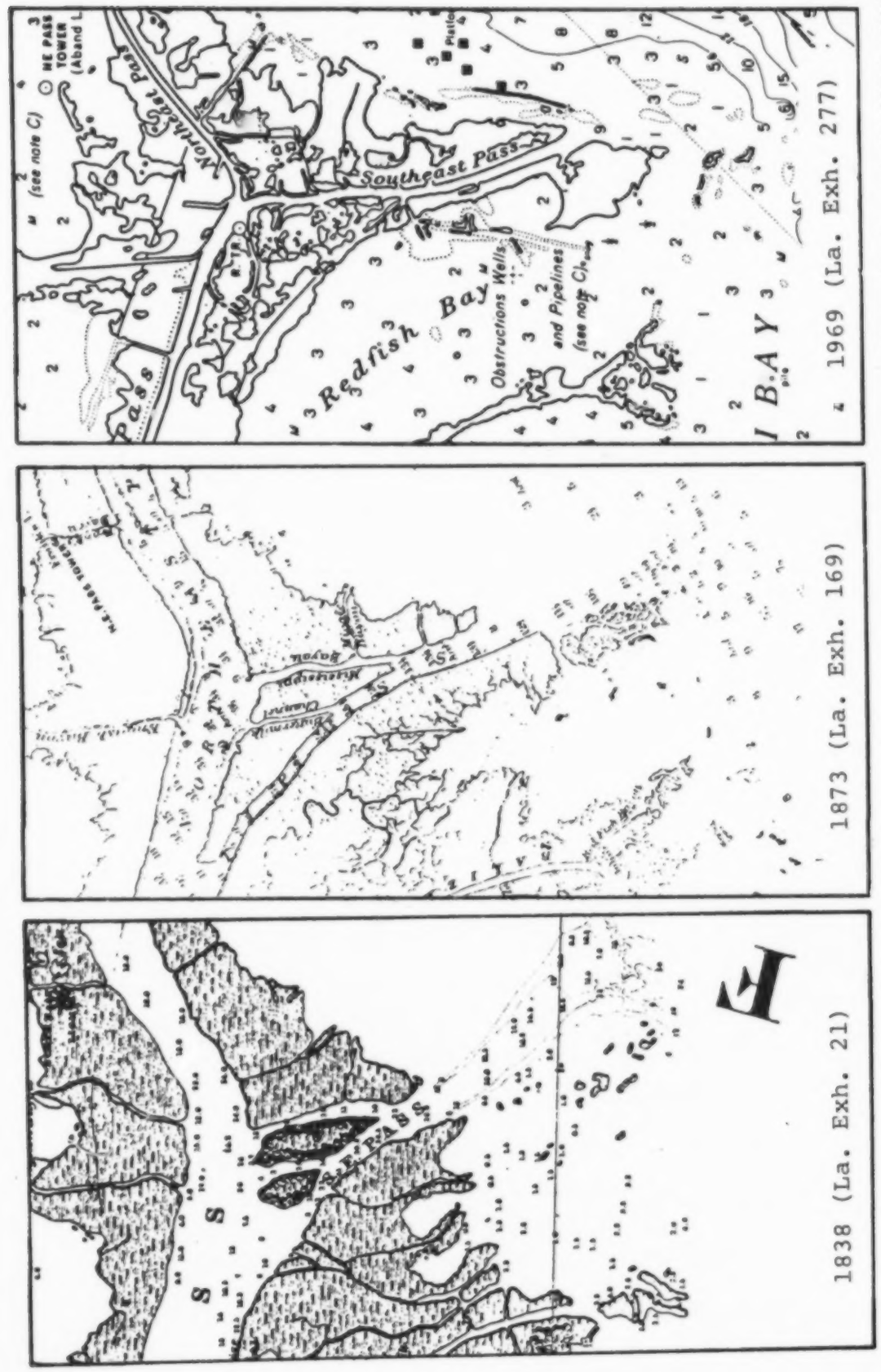


Figure 32. Natural assimilation of mudlumps at Southeast Pass as reflected on nautical charts dated 1838 to 1969.

poration. (La. Exhs. 10 at p. 87, 21, 169, and 277; Dr. Morgan, tr. 338-39.)

E. Water depths lying between the Southeast Pass mainland and off-lying mudlumps are so shallow as to be unnavigable even in small craft. The U.S.C. & G.S. was unable to sound the intervening waters on the latest hydrographic survey, although water depths along the periphery range from ½ to 3 feet. See Figure 33, *infra*, for a comparison of hydrography and planimetric configuration at Southeast Pass. (La. Exh. 340, photo No. 6; La. Exh. 346; James Richardson, tr. 5058-5060; Dr. Morgan tr. 240-242.)

F. The distance between the mainland (at x = 2, 725, 550; y = 153, 430) and the first mudlump off the tip of Southeast Pass is approximately 1600′. The distance to the next mudlump is approximately 530′, and from that mudlump to the outermost is about 1420′. Overall distance from the mainland to the outermost mudlump is less than one statute mile (approximately 5080′). See Figure 34 showing measured distances. (U.S. Exh. 374-Map 3 of 8.)

G. If the Spanish Banks are assimilable to Little Pine Key in the Florida Bay area under principles enunciated by the Supreme Court in prior submerged lands cases, including size and distance from the mainland, (see Special

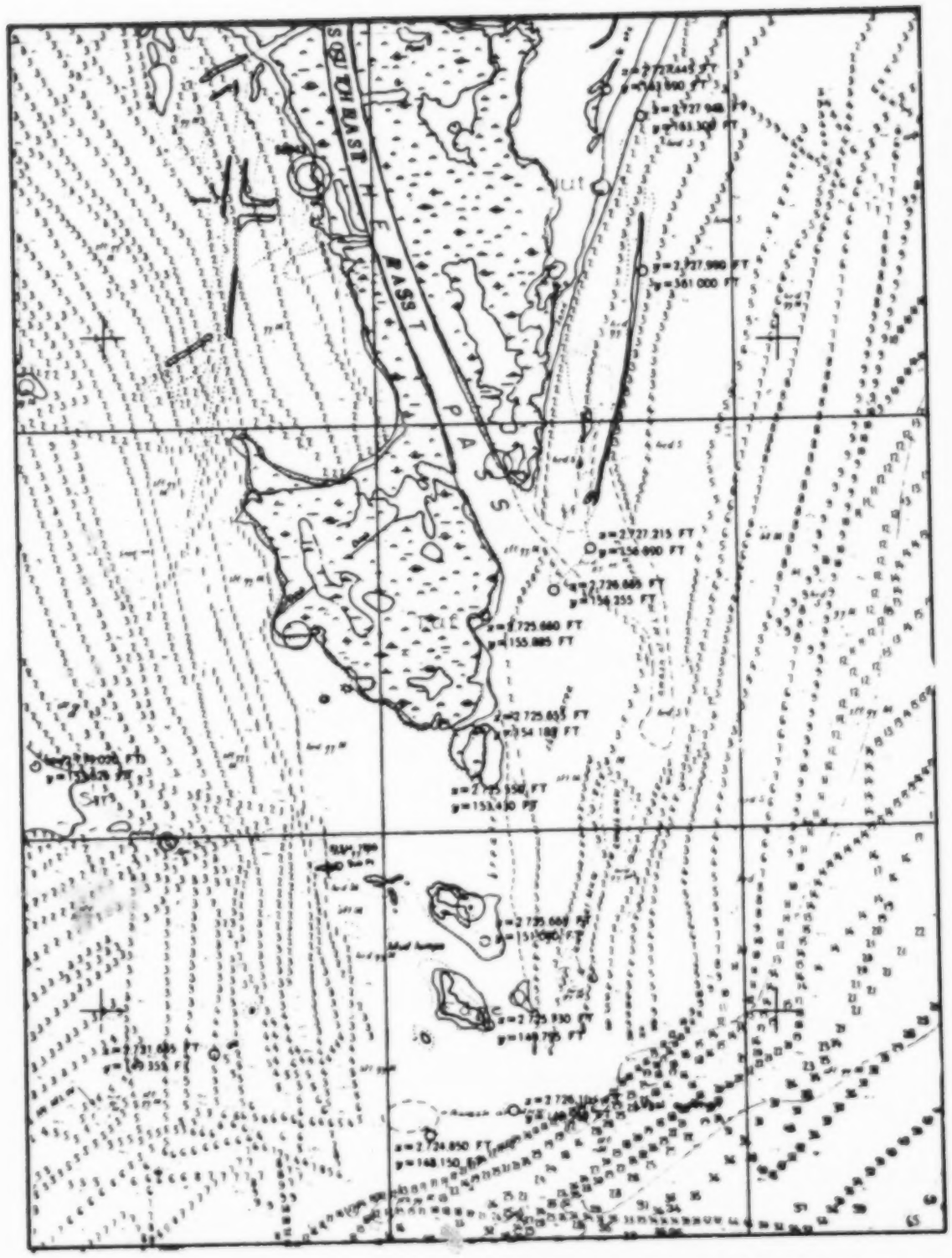


Figure 33. Superimposition of latest hydrographic survey (H-6553 of 1940) on Map 3 of 8 in Southeast Pass area showing extremely shoal water depths between the mainland and offlying mudlumps. (La. Exh. 216 and U.S. Exh. 374.)

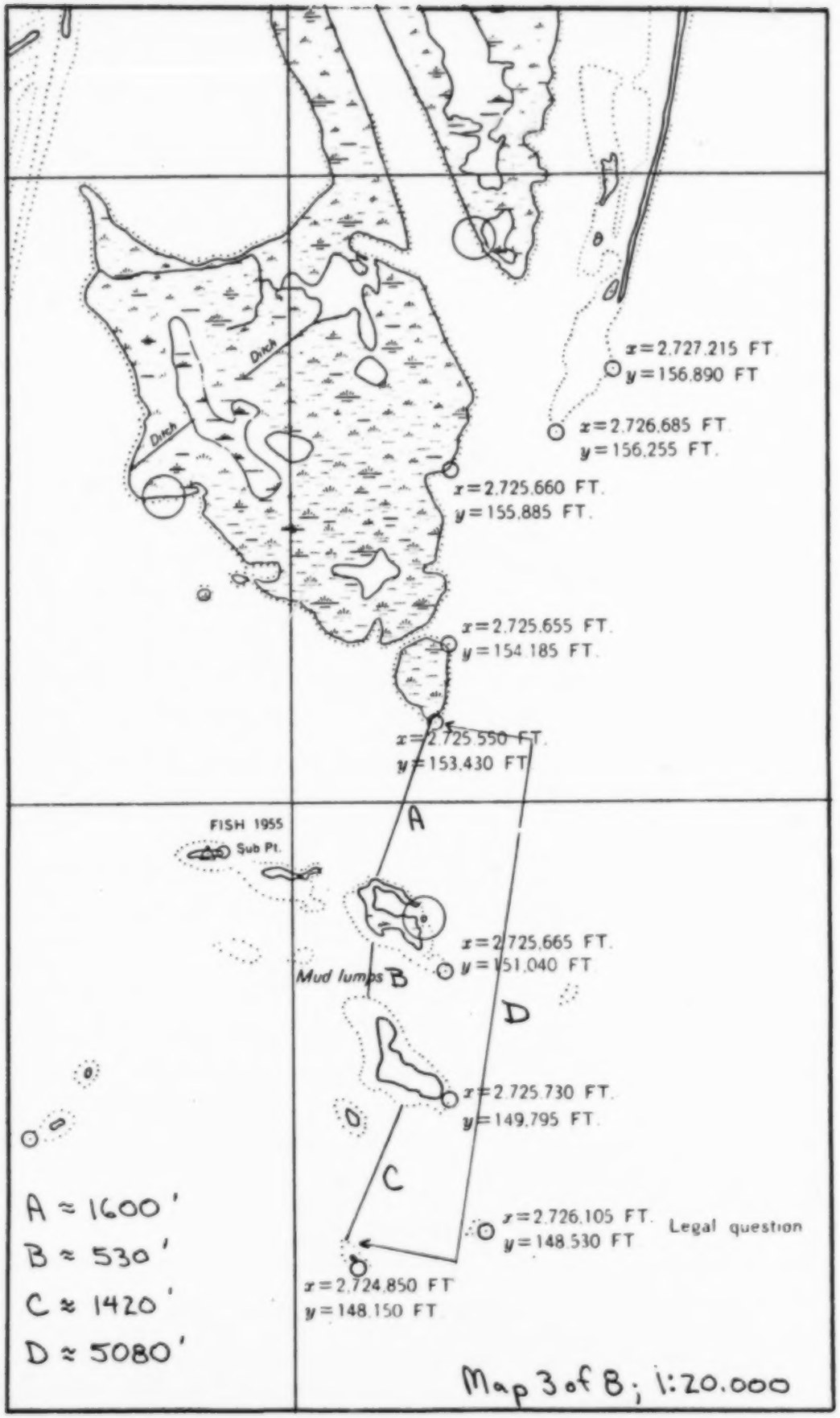


Figure 34. **Portion of Map 3 of 8 showing water gap distance data at Southeast Pass mudlumps. (U.S. Exh. 374.)**

Master Maris' Report in *United States v. Florida*, No. 52, Original, pp. 38-39 & 46-47), it is inconsistent not to assimilate the Southeast Pass mudlumps to Southeast Pass on the same bases. See Figure 35, *infra*, for a comparison at the same scale.

43. Assuming the mudlumps at Southeast Pass to be assimilable (Finding 42), the waterbody enclosed by a line from x = 2,724,850; y = 148,150 to x = 2,702,461; y = 124,148 meets all juridical bay requirements of Article 7 of the Territorial Sea Convention.

A. The most seaward mudlump off Southeast Pass constitutes the apex of a salient of the coast and the maximum extension of the Southeast Pass landform into the Gulf. (La. Exhs. 8 and 12 [No. 10-13]; Dr. Morgan, tr. 239-241.)

B. The terminus of the eastern jetty at South Pass constitutes the maximum extension of the eastern South Pass levee into the Gulf and is unquestionably the apex of a coastal salient. (Should use of artificial features as headlands be held impermissible, the western levee would so qualify because of accretion attached thereto.) (La. Exh. 8.)

C. The enclosed waterbody is landlocked, as ascertained from its penetration in proportion to width of mouth. (La. Exh. 8.)

D. The enclosed waterbody meets semicircle test

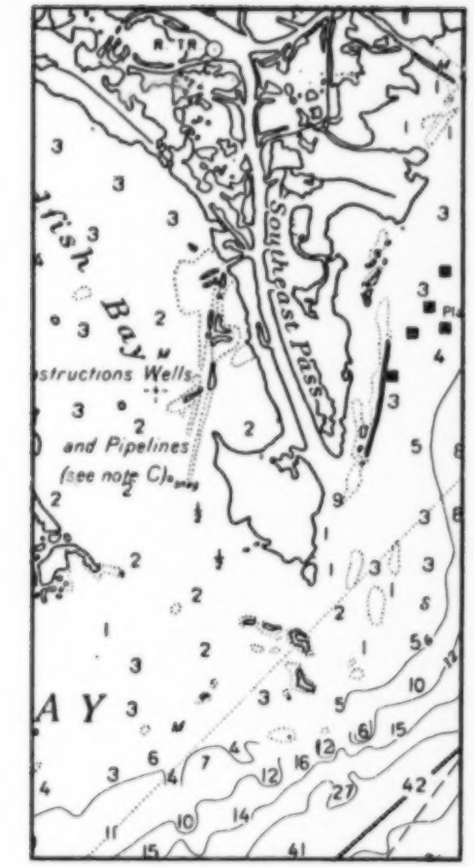


Chart 1272

Naut. Mi.

Chart 1251—north is directed downward on the page to facilitate comparison with Southeast Pass.

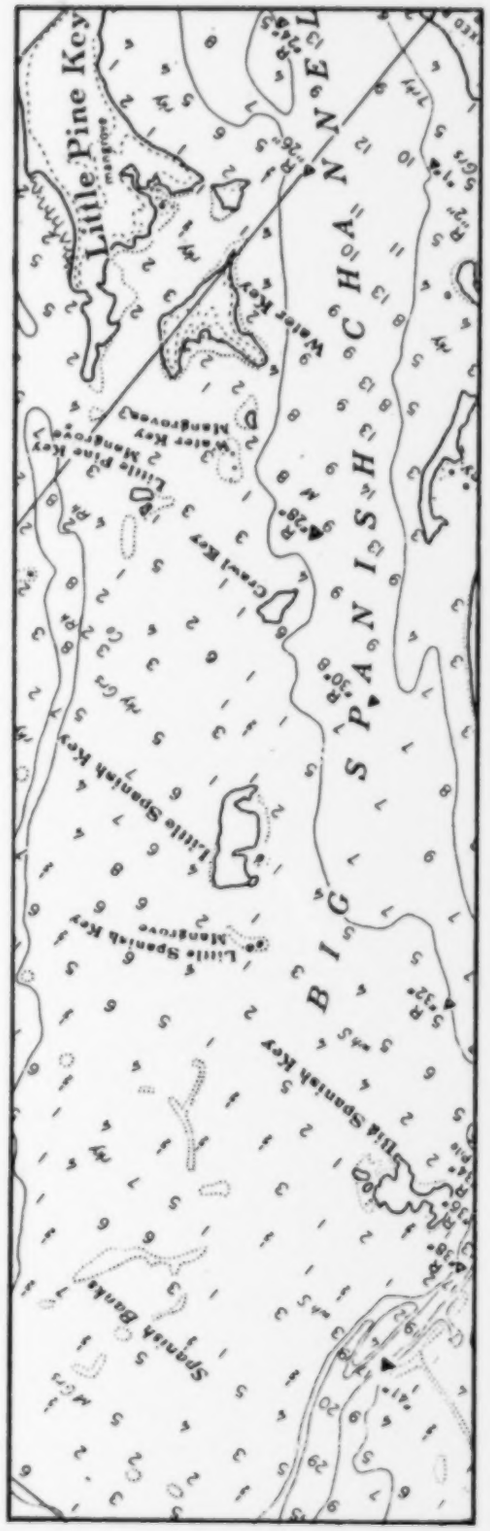


Figure 35. Comparison of factual situations at Southwest Pass and Florida Bay area. Both illustrations are taken from nautical charts at a scale of 1:80,000. The Spanish Banks were held to be assimilable by Florida's Special Master.

[Note: Southwest Pass in caption should be Southeast Pass. Scale has been modified for reproduction of this illustration.]

requirements. Although inspection of charts in this area unquestionably substantiates this statement, Louisiana's 1968 Brief to the Supreme Court (p. 181, n. 173) verifies that fact, indicating that the waterbody satisfies the test by 9,500 acres.

South Pass

44. Mudlump No. 94, located on Figure 2, p. 8 of La. Exh. 6 (also as La. Exh. 121A), has existed above mean low water from at least January 7, 1954 until present.

A. Mudlump No. 94 was first detected as a submarine feature at -2′ MGL in June and August 1950 (La. Exh. 6, pp. 12 and 59; La. Exh. 10, p. 43).

B. Mudlump No. 94 was detected on aerial photography beginning 1/7/54 near or above water level until January 1961, at which time the Master recognizes its unquestionable existence, and after. See Figure 36. (La. Exh. 121, photographs 5, 6, 8, 9, 10, 11, and 13; Curtis Buttorff, tr. 1989-2029; La. Exh. 184X; *Louisiana Brief*, Vol. VIII, Appendix J.)

C. It is probable that landforms shown at or above water level on photographs taken during photographic daylight in the Mississippi delta area are above mean low-water level. (U.S. Exh. 3; *Louisiana Brief*, Vol. VIII, Appendix J.)

D. Mudlump uplift is most pronounced in the

summer months following spring flood of the Mississippi River, while mudlump degradation by storm and wave action is accentuated in winter months. (La. Exh. 10, pp. 98-99.)

A HISTORY OF A "NON-EXISTENT" MUDLUMP (NO. 94) AS SHOWN ON NUMEROUS AERIAL PHOTOGRAPHS, SURFACE PHOTOGRAPHS AND SURVEYS

Its Submarine History.

8/1950 - first detected as a submarine mudlump (−2′ at MGL) on Corps of Engineers 1″ = 400′ map. La. Exh. 6, p. 12, 59.

Its Subaerial (above water) History.

01/07/54	air photo	724-193	La. Exh. 121	No. 5
02/29/56	air photo	24-116	La. Exh. 121	No. 6
10/11/58	air photo	L6948	La. Exh. 121	No. 8
11/08/59	air photo	144	La. Exh. 121	No. 9
11/30/59	air photo	L8728	La. Exh. 121	No. 10
12/07/59	air photo	L9121	La. Exh. 121	No. 11
10/13/60	air photo	62	La. Exh. 121	No. 13
10/17/61	air photo	112	La. Exh. 121	No. 14
11/23/62	air photo	75	La. Exh. 121	No. 15
11/1964	Morgan photo La. Exh. 12, No. 35, see tr. 271-72.			
11/1964	Morgan photo La. Exh. 12, No. 36, see tr. 272.			
11/1964	Morgan structure map shows 300′, La. Exh. 12, No. 49			

Figure 36. Portion of Appendix J of the *Louisiana Brief* (Vol. VIII, p. 11) reflecting history of Mudlump 94 until 1964, by which time the Master recognizes its unquestioned existence.

E. Although Mr. Buttorff was able to readily identify the existence of Mudlump No. 94 on air photographs taken from 1954 until present, the feature is clearly visible to the naked untrained eye as being above water on U.S. Army Corps of Engineers air photograph 551 X2, taken October 29, 1957. Figure 37, *infra*, is a copy of this photograph overlain by a registered transparency of La. Exh. 121A, identifying mudlumps by the Morgan numbering system. (La. Exh. 6, p. 8; La. Exh. 193C.)

45. Mudlump No. 93 located on La. Exh. 121A (formerly SP-3 in early Morgan publications—La. Exh. 10), was first observed above the water surface in June 1948 and has persisted and increased in size until present. (Dr. Morgan, tr. 2356-57; La. Exh. 6, pp. 7-12; La. Exh. 10. pp. 72-75, 99 fn. 10, and Figure 44 and Plate 4; La. Exh. 121, Photographs 4-23; La. Exh. 11, p. 156; La. Exh. 12; *Louisiana Memorandum Presenting Additional Technical Data and Information Requested by the Special Master at the October 29, 1973 Conference*, photographs following p. 34.)

46. The existence of mudlump islands in the area east and northeast of Mudlumps 92-94 (see La. Exh. 121A) shown on editions of Chart 1272 dated from 3/28/41 until 12/6/69 should be given effect until present in this litigation as these features were shown on official large-scale nau-

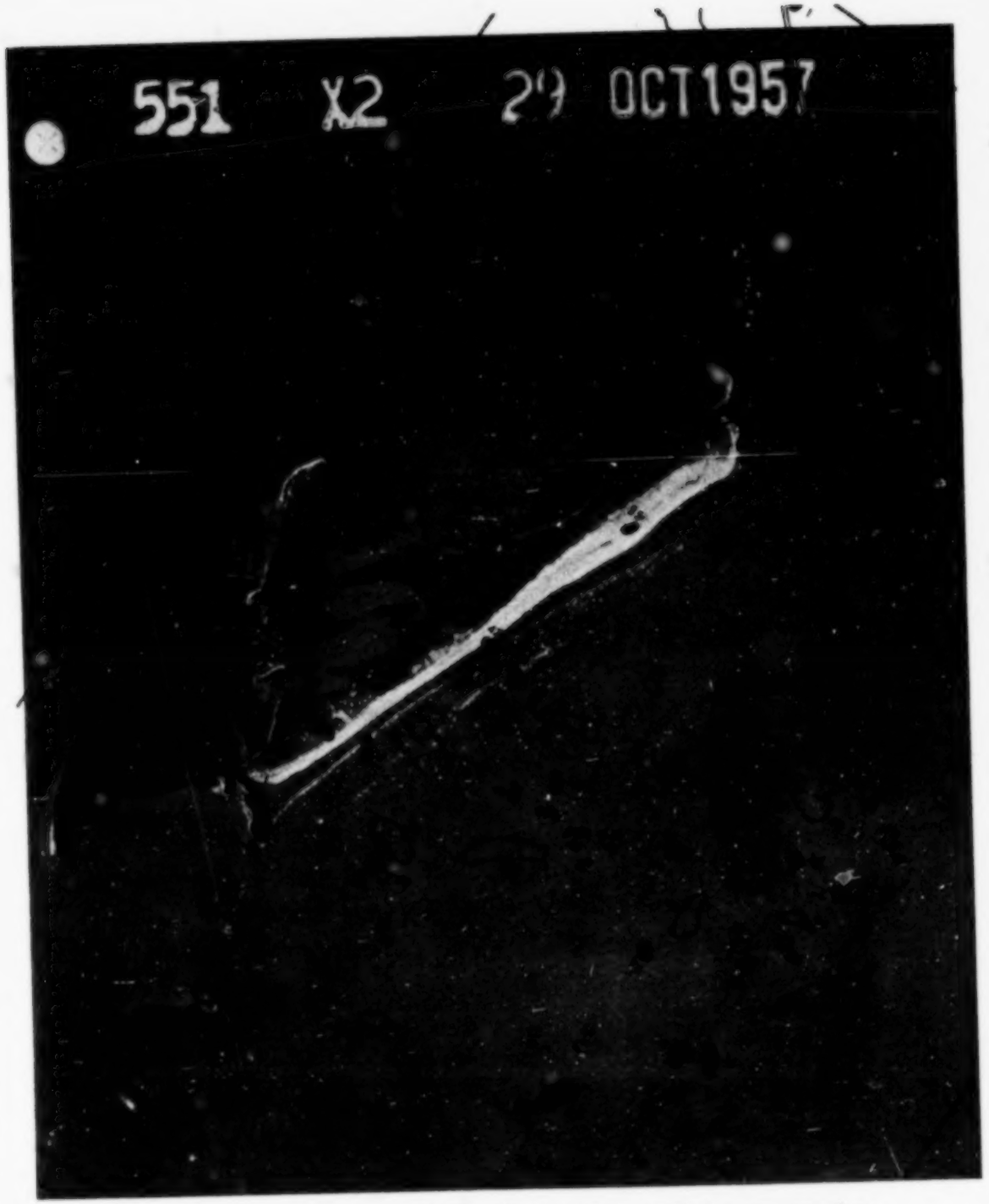


Figure 37. Superimposition of La. Exh. 121A, an overlay showing distribution of mudlumps at South Pass from a Morgan publication (La. Exh. 6), over a 1957 Corps of Engineers aerial photograph (551 X2), which unquestionably shows Mudlump No. 94 as being of considerable areal extent and located above water at that time.

tical charts published by the U.S.C. & G.S. until December 5, 1969, the date upon which the Joint Pretrial Statement was filed with the Special Master in Memphis. On that date the correctness of the Set of 54 Maps was stipulated to, except in a few areas where the chart should control; the South Pass mudlump area was one of these. The additional mudlumps were indicated on Chart 1272 until their removal at request of Federal counsel on the edition dated 12/6/69 (see Finding 29, *supra*, and Figure 38). It certainly should be held that their existence was not reasonably disproved until the date of the Federal resurvey in January/February 1970, if this evidence, obtained at variance with normal charting techniques, is allowed to control. It should be noted that on the latest chart, dated 8/15/70, the area in question is still specially delimited and labeled, "foul with shifting shoals and mud lumps," a near-disclaimer of the 1970 Federal resurvey work. (La. Exhs. 8, 22, 123 at pp. 100-104; 124, 165, 166, 167, 168, 277, and 293.)

47. The existence of mean low-water areas surrounding the mudlumps subject of Finding 46, *supra*, and shown on Chart 1272 on editions dated 12/4/50 until 12/6/69 should be given effect until present by reasoning presented in Finding 46. Alternatively, the low-water line shown on the charts of this period in the area in question should control until the date of the 1970 resurvey. (See Figure 38 and citations contained at Finding 46.)

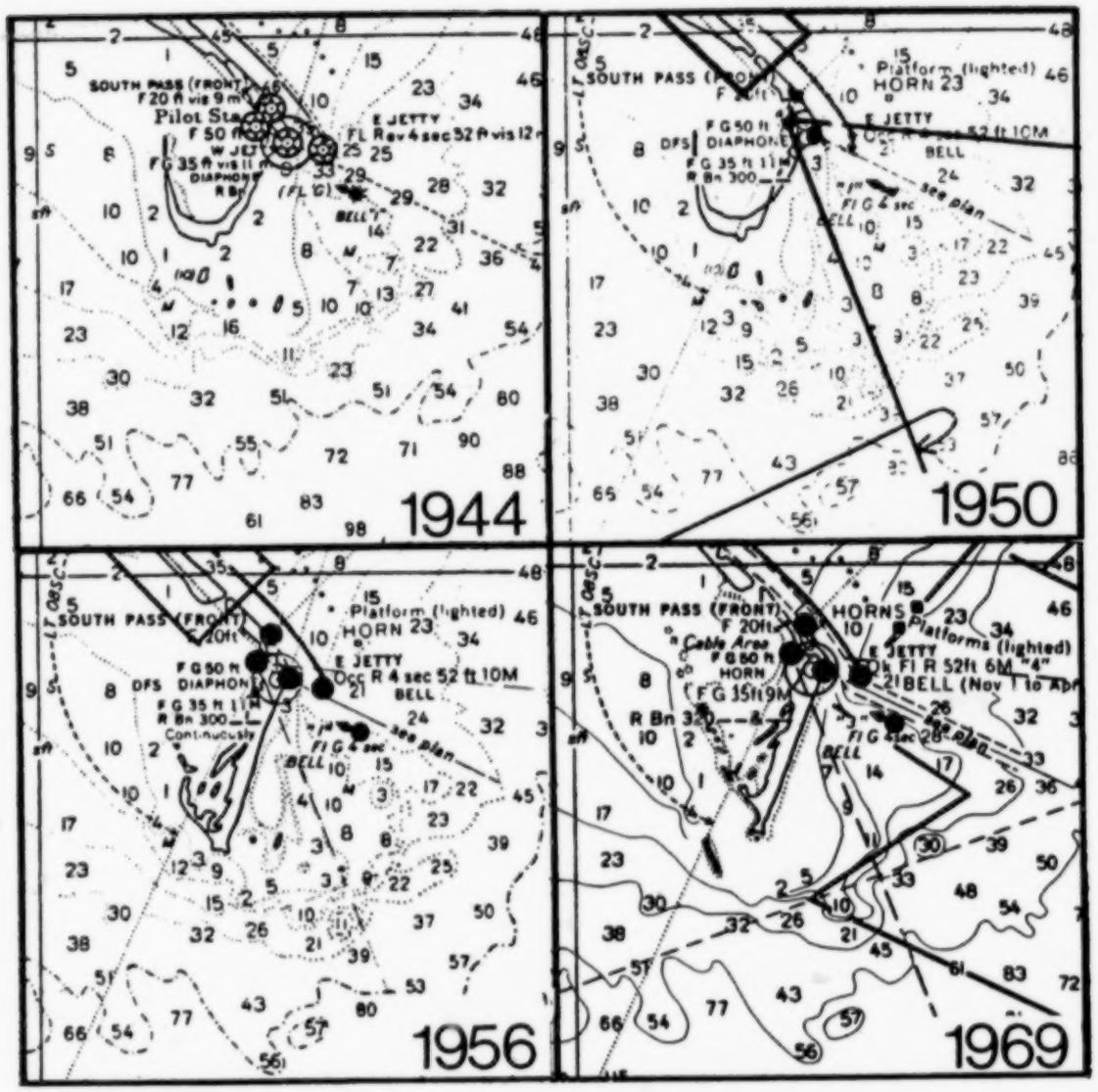


Figure 38. Comparison of various nautical chart configurations showing mudlumps and low-water information at South Pass from 1944 to 1969. (La. Exhs. 22, 165, 167, 168 and 296.)

Southwest Pass to Belle Pass: Ascension Bay

48. Ascension Bay, bounded by the natural levee of the Mississippi on the east and by the natural

levee of Bayou Lafourche on the west, is juridically and geographically a bay that has a mouth in excess of 24 miles wide, and a 24-mile line should be drawn within it and used as a baseline.

A. Geographically and geomorphologically, Ascension Bay is a well-marked indentation of the coast, for it is an interdeltaic estuarine basin bounded by two prominent physical features, the natural levees of Bayou Lafourche and of the Mississippi River and Southwest Pass, which clearly mark its sides and mouth. See Figure 39, *infra.* (Dr. Morgan, tr. 146-47; La. Exh. 104.)

B. The Geographer of the Department of State recognized that Ascension Bay is well marked. (Dr. Robert D. Hodgson, tr. 5379.)

C. The well-marked character of Ascension Bay is further shown by the pronounced character of the headlands that mark its mouth which compare favorably to those of Monterey Bay and other recognized bays. See comparisons with Monterey Bay (Figure A-5 of *Louisiana Brief*, Vol. V, Part 5, following p. 18) with an unnamed Alaskan Bay (Figure A-7 of *Louisiana Brief*, Vol. V, Part 5, following p. 20), with Moray Firth (Figure 138A of *Louisiana Reply Brief*), and with Egmont Bay (Figure 139A of *Louisiana Reply Brief*).

D. Cartographic comparisons enumerated in Finding 48.C, *supra*, demonstrate Ascension Bay's

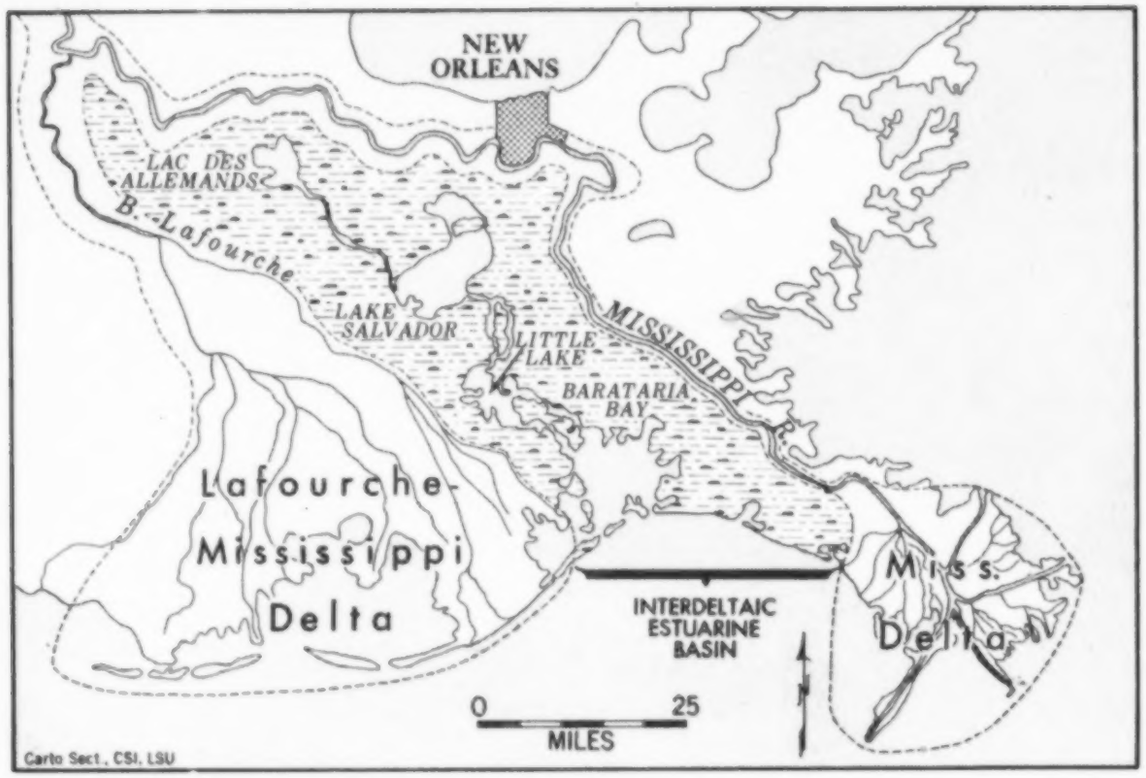


Figure 39. Reproduction of Figure 7 "Interdeltaic basin between two Mississippi River delta systems" from Dr. Morgan's article, "Ephemeral Estuaries of the Deltaic Environment" in *Estuaries* (La. Exh. 324) p. 119.

equivalent or superior landlocked and size/enclosure characteristics. (See also Thames Estuary analysis, *Louisiana Brief*, Vol. V, Part 5, pp. 27-29, and Hawke Bay analysis, *Louisiana Brief*, Vol. V, Part 5, pp. 33-35 including Figure A-14.)

E. The landlocked character of a bay is measurable by a consideration of the depth of penetration of an identation in proportion to the width of its mouth. If a waterbody is landlocked, it is more than a mere curvature of the coast. (See Article 7 of the Territorial Sea Convention; *North Atlantic Coast Fisheries Arbitration*, [Scott, *The Hague Court Reports* (1916), pp. 183-84—Finding 1.B, *supra*]; La. Exh. 230.)

F. The method of mathematical measurement of depth of penetration in proportion to width of mouth that is most suitable in applying Article 7 is that system which enables measurement to the deepest point of the indentation, since measurement of depth reasonably requires measurement of total depth.

G. Possible mathematical systems of measuring depth of penetration in proportion to width of mouth confirm subjective and graphic impressions that Ascension Bay is landlocked. (David Morgan, tr. 3844-47; La. Exhs. 229 and 237A-C.)

H. As reflected on La. Exh. 229, the depth of penetration in proportion to width of mouth of Ascension Bay is materially greater than Monterey Bay and also compares well with other recognized bays by mathematical measurements.

I. The Shalowitz system of recognizing that an essentially semicircular indentation has sufficient configuration to be a well-marked, landlocked indentation is correct. (1 *Shalowitz* 34-

36; the language of Convention Article 7(2) supports such an analysis,

> An indentation shall not, however, be regarded as a bay unless its area is *as large as*, or larger than, that of *the semicircle* whose diameter is a line drawn across the mouth of that indentation. [Emphasis added.])

J. It is found that Ascension Bay has more than an essentially semicircular configuration and, therefore, materially exceeds minimum requirements. See Figure 40, *infra*.

K. A pronounced pocket exists near the eastern headland of Ascension Bay consisting of West Bay and more interior waters where substantial erosion has taken place and continues to the present. (*Louisiana Brief*, Vol. V, Part 5, pp. 22-23, including Figure A-8; La. Exh. 4, Figures 3-5; Dr. Morgan, tr. 139-41.)

L. The presence of pockets at the sides of an indentation or mouth of an indentation is unnecessary to a finding that the indentation is either well marked or landlocked. (Article 7 of the Convention; see list of V-shaped bays recognized in U.S. Exh. 416-D, in *Louisiana Reply Brief*, Figures 67A and 70A.)

M. The natural entrance points of Ascension Bay are at the mouth of Bayou Lafourche at Belle Pass and the mouth of the Mississippi River

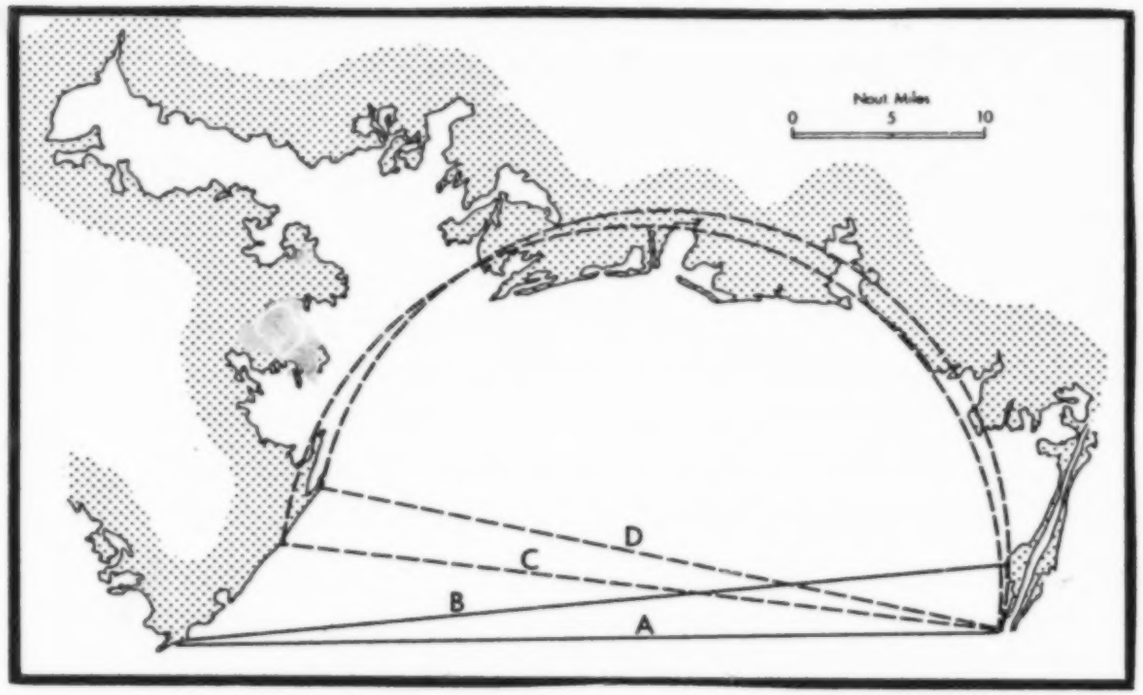


Figure 40. Ascension-Barataria Bay (Figure A-15, *Louisiana Brief*, Vol. V, Part 5, following p. 35) showing locations of two possible overlarge bay closures (C and D) landward of those shown on La. Exh. 104 (A and B). Lines C and D enclose waters even more landlocked than those behind lines A and B and would even more obviously satisfy semicircle test requirements.

at Southwest Pass. (See Figure 40; La. Exh. 104; Dr. Morgan, tr. 2731-32.)

N. If the points mentioned in the preceding finding (48.M) as natural entrance points would not satisfy natural entrance point requirements, other points more inward within the indentation, *e.g.*, at the hump at Southwest Pass, would constitute reasonable natural entrance points of an indentation that would satisfy the semicircle test. (See Figure 40.)

O. The waters of the Barataria Bay-Caminada Bay complex form part of the area of Ascension Bay. (394 U.S. 11, 50-53.)

P. Even not counting the waters of Barataria Bay-Caminada Bay, it would be found that Ascension Bay constitutes a well-marked, landlocked indentation and is more than a mere curvature of the coast which satisfies the semicircle test, especially considering advanced deterioration of West Bay. (Finding 48.K, *supra*; Figure 40.)

Q. Utilizing outer natural entrance points enclosing Ascension Bay by lines from x=2,354,-070; y=152,599 to x=2,607,290; y=93,040 or from x=2,354,434; y=153,240 to x=2,615,-475; y=113,900, the waterbody thus enclosed exceeds semicircle test requirements, using properly includable tributary waterbodies, by approximately 50,000 to 125,000 acres. (La. Exh. 104, sheet 1; Philip Whitaker, tr. 3966-74, Phillip Larimore, tr. 3547-56; admission of Mr. Charney, tr. 3970.)

R. Findings above that Ascension Bay between its outer or even interior alternative possible headlands is well marked, landlocked, and satisfies semicircle test requirements are based upon use of the maps and surveys in the record. However, there is also much evidence in the record showing that in interior portions of pockets, coves, or bay within Ascension Bay,

there has been much expansion of water areas that would materially add to the area of the bay for consideration of configuration questions. (Finding 48.K, *supra*; Dr. Morgan, tr. 95-96, 139-41.)

S. A 24-mile baseline drawn from the tip of the Empire Canal jetties at x=2,550,402; y=216,-158 to x=2,406,890; y=189,733 is a line which would enclose the maximum extent of inland waters as prescribed by Article 7(5) and said line should be used for projection of the three-mile belt. (La. Exh. 104.)

West Bay to Pass Tante Phine

49. As discussed under Finding 46, *supra*, at South Pass, the effect of landforms shown on various editions of Chart 1272 dated from 4/1/44 to 12/6/69 (Figure 41, *infra*) should control in this litigation, as the features continued to be carried until and after the stipulation to accept the correctness of the Set of 54 Maps on December 5, 1969. In the absence of stipulation to the contrary, such as in the subject areas, large-scale charts published by the U.S.C. & G.S. should control. Certainly, these features should be given effect for three-mile projections until the date of the 1970 Federal resurvey, when the existence of these features was purportedly disproved. (La. Exhs. 165, 166, 167, 168, 8, 277, 124; La. Exhs. 22 & 23; U.S. Exh. 200; *Louisiana Reply Brief*, pp. 140-149, particularly Figure 149A.)

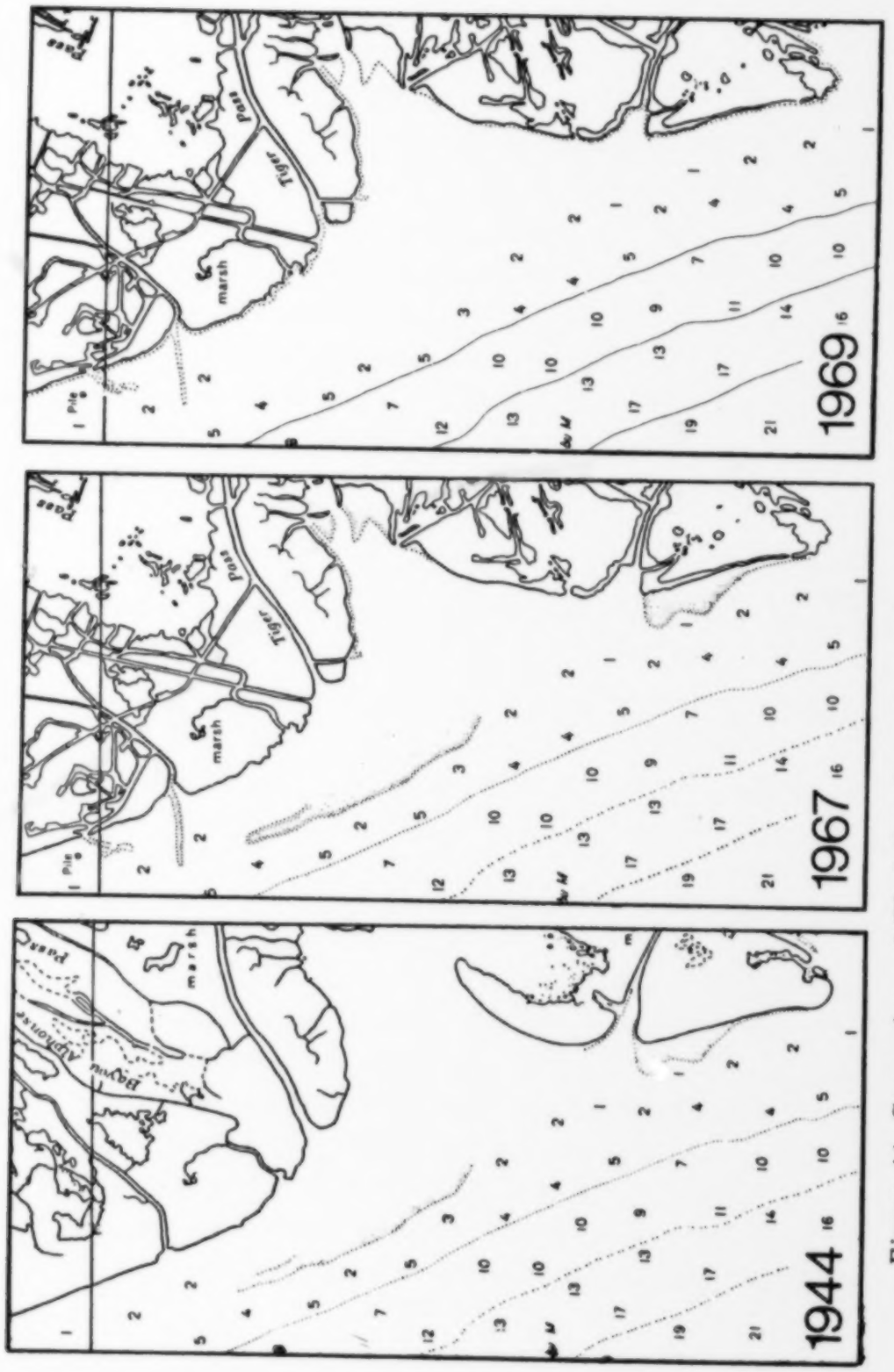


Figure 41. Comparison of West Bay/Pass Tante Phine area on Chart 1272 editions dated 4/1/44 to 12/6/69. Note that even after 12/6/69, various landforms at the mouth of Pass Tante Phine continued to be shown. (La. Exh. 8, 22, 124, & 165.)

50. Should the Master deny Finding 49, *supra*, and allow the Federal resurvey to control and to be applied retroactively to 12/6/69 despite the lack of thorough hydrographic sounding work typical of charting surveys, Louisiana is, at a minimum, entitled to three-mile projections from the features in question until 12/6/69. (La. Exhs. 124 & 277.)

Caillou Bay

51. Caillou Bay is a well-marked indentation which has been recognized as a bay in the geographic sense since earliest cartographic documentation.

A. The Gauld map based upon surveys from 1764 to 1771 shows Caillou Bay (unnamed) as a pronounced indentation of the coast. (La. Exh. 247.)

B. The Connely field notes of 1838, which formed a basis for the first official land survey in the Caillou Bay area, refers to "Caillou Bay" and "Derniere Isle," or "Last Island." (La. Exh. 171.)

C. From at least 1842 until present, the area claimed by Louisiana as juridical Caillou Bay was designated by that name on maps and charts published by Federal, State and private entities. (La. Exhs. 196, 157, 135, 215, 186, 274, 256-A-D, 207, 258, 268, 270, 50; U.S. Exhs. 347, 374.)

D. The designation "Caillou Bay" has remained

on official U.S.C. & G.S. charts despite segmentation of Isle Derniere. (La. Exh. 50.)

E. Maps 19-22 of 41 of the Set of 54 Maps, made for purposes of this litigation, indicate Caillou Bay's existence (by designation on those maps at least as a geographic entity, from Isle Derniere to the northern mainland shore just east of Taylor's Bayou. (U.S. Exh. 374.)

F. If the configuration of Caillou Bay had become sufficiently un-bay like over its cartographic history to destroy its geographic character as a bay, the name would have been removed from the official charts under present charting practices of the U.S.C. & G.S. as follows:

> A geographic name is applied to a particular feature which has identity. If the feature ceases to exist, the name becomes meaningless and is removed from the charts. 2 *Shalowitz* 321.

52. The geographic entity "Caillou Bay" has had an extent approximating Louisiana's juridical bay claim in that area over the cartographic history of the bay, provided that the following procedure was used in placement of the bay nomenclature on the various maps and charts published by agencies of the Federal government.

> The placement of geographic names on nautical charts (this also applies to the

> topographic and hydrographic surveys) follows well-established cartographic principles. . . . [T]he name of a feature which covers a considerable area, such as an island or a bay, is placed in the approximate center of the area, where possible, and is curved to follow the general configuration of the feature. (2 *Shalowitz* 321.)

A. Placement of the nomenclature "Caillou Bay" on the Hughes Military Reconaissance map (U.S. Exh. 347) implies a bay extent similar to that claimed on a juridical basis by Louisiana (La. Exh. 198), assuming the principle stated above.

B. Placement of the name "Caillou Bay" on the 1932 edition of U.S.C. & G.S. Chart 198 reflects a geographic extent compatible with the extent of Louisiana's juridical bay claim in this proceeding, assuming the principle stated above. (La. Exhs. 268 and 198.)

C. Placement of the name "Caillou Bay" on the latest Chart 1275 submitted in this proceeding (6/27/70) indicates a geographical extent of Caillou Bay at least as large as Louisiana's minimum alternative claim in the area, assuming the principle stated above. (La. Exhs. 50 and 198.)

53. Additional land areas defined and delimited by Louisiana expert witnesses on La. Exh. 300 and not shown on the Set of 54 Maps were in existence,

at least above the mean low water datum, at the time that the official 1954 Ammann photography was taken. These areas, lying landward of inland water closures formerly recognized by the Federal government at Caillou Bay and landward of the termination of low-water line information on the Set of 54 Maps, are not contrary to the stipulation in the Joint Pretrial Statement (Part B) and should be given effect in delimiting Louisiana's coastline in this area.

A. Under the Joint Pretrial Statement the parties have a right to show "inland portions of water lines left incomplete on the Set of 54 Maps" provided that additional evidence is "not inconsistent with those maps." (Joint Pretrial Statement, p. 11.)

B. The United States Justice Department recognized closures between headlands located on the seaward side of the Isle Derniere segments from at least 1950 (Chapman Line) until August 1968 (U.S. Exhs. 116 and 117 at p. 3; La. Exh. 178 at pp. 1-2, 8, 19-20, 55-56, 76, 96; *Motion by the United States for Entry of a Supplemental Decree and Memorandum in Support of the Motion of the United States and in Opposition to the Motion of the State of Louisiana*, at p. 21-22; *Brief for the United States on Cross Motions for the Entry of a Supplemental Decree as to the State of Louisiana (No. 2)*, at p. 89-90.)

C. The Federal government specifically recognized the following closures on the Set of 54 Maps:

From:	To:
x = 2,134,210 y = 136,726	x = 2,138,231 y = 136,387
x = 2,148,929 y = 136,962	x = 2,157,920 y = 135,521
x = 2,162,430 y = 135,112	x = 2,163,266 y = 135,182
x = 2,171,989 y = 136,334	x = 2,179,937 y = 135,695

(1968 United States Motion at p. 21-22; La. Exh. 300).

D. 1954 Ammann International aerial photography was utilized exclusively in the Isle Derniere/Caillou Bay area as a direct basis for the Set of 54 Maps (U.S. Exh. 10 [p. 3], 14, 20 [p. 2], 21, 30 [pp. 2-3 and p. 5].)

E. U.S. Exhs. 257 and 258 and La. Exhs. 302-320 are true and accurate copies of the 1954 Ammann photography which was utilized to ascertain the low-water line along the outer shore of Isle Derniere. (See also La. Exh. 333.)

F. The insular features and additional land areas lying behind island segments interpreted by Mr. Curtis Buttorff, which are shown on La. Exh. 300 (cross-hatched areas), are plainly

visible on U.S. Exhs. 258-259. These areas lie landward of the closures designated in Finding 53.C, *supra*, and are not inconsistent with low-water line information provided on Maps 19 and 20 of 41.

G. The features referred to in Finding 53.F, *supra*, and shown cross-hatched on La. Exh. 300 are at least above mean low water and probably represent islands (above high water). (La. Exhs. 327, 332, 333, 334; Curtis Buttorff, tr. 5868-79 and 5930-41; U.S. Exhs. 417-18, p. 20-22.)

H. Except to show low-water lines felt incomplete on the Set of 54 Maps, evidence offered attempting to show island configurations based upon survey information later than the dates upon which the official Ammann photography was taken (post 1954) is inadmissible. Such information would be contrary to the stipulation outlined in Finding 53.A, *supra*, unless the express purpose of such evidence is to show the character of the area and not to depart from the low-water line portrayed on the Set of 54 Maps.

* * * * *

Louisiana requests the following group of findings (Findings 54 through 57) as a primary request. Should the Master feel compelled by the 1969 Supreme Court Opinion (394 U.S. 11, 67 n. 88) to deny or respond negatively to these findings, Louisiana respectfully requests, in the alternative, that the Master respond to Findings 58 through 61, *infra*.

* * * * *

54. On the basis of evidence in the record now before the Special Master, the various segments of Isle Derniere should be assimilated to the mainland under the criteria enunciated by the Supreme Court for purposes of delimiting juridical Caillou Bay.

A. Early charts and maps of the Caillou Bay/Isle Derniere region show considerable north-south continuity between the mainland and the island, both at the vicinity of Caillou Boca and to the east. (La. Exhs. 247, 196, 157, 135, 151, 274, 256, 258, 268, 185-B; U.S. Exh. 374; *Louisiana Memorandum Presenting Additional Technical Data and Information Requested by the Special Master at the October 29, 1973 Conference*, Figure 158-A, following p. 54—reproduced *infra* as Figure 42.)

B. Caillou Boca has been in existence (although of lesser extent formerly) since at least 1842. No map in the record showing the existence of Caillou Boca has failed to show the existence of a geographic feature designated "Caillou Bay." (La. Exhs. 196, 157, 135, 215, 186, 374, 256 A-D, 207, 258, 268, 203, 270, 50; U.S. Exhs. 347, 374.)

C. Caillou Boca has evidenced a shallowing trend;

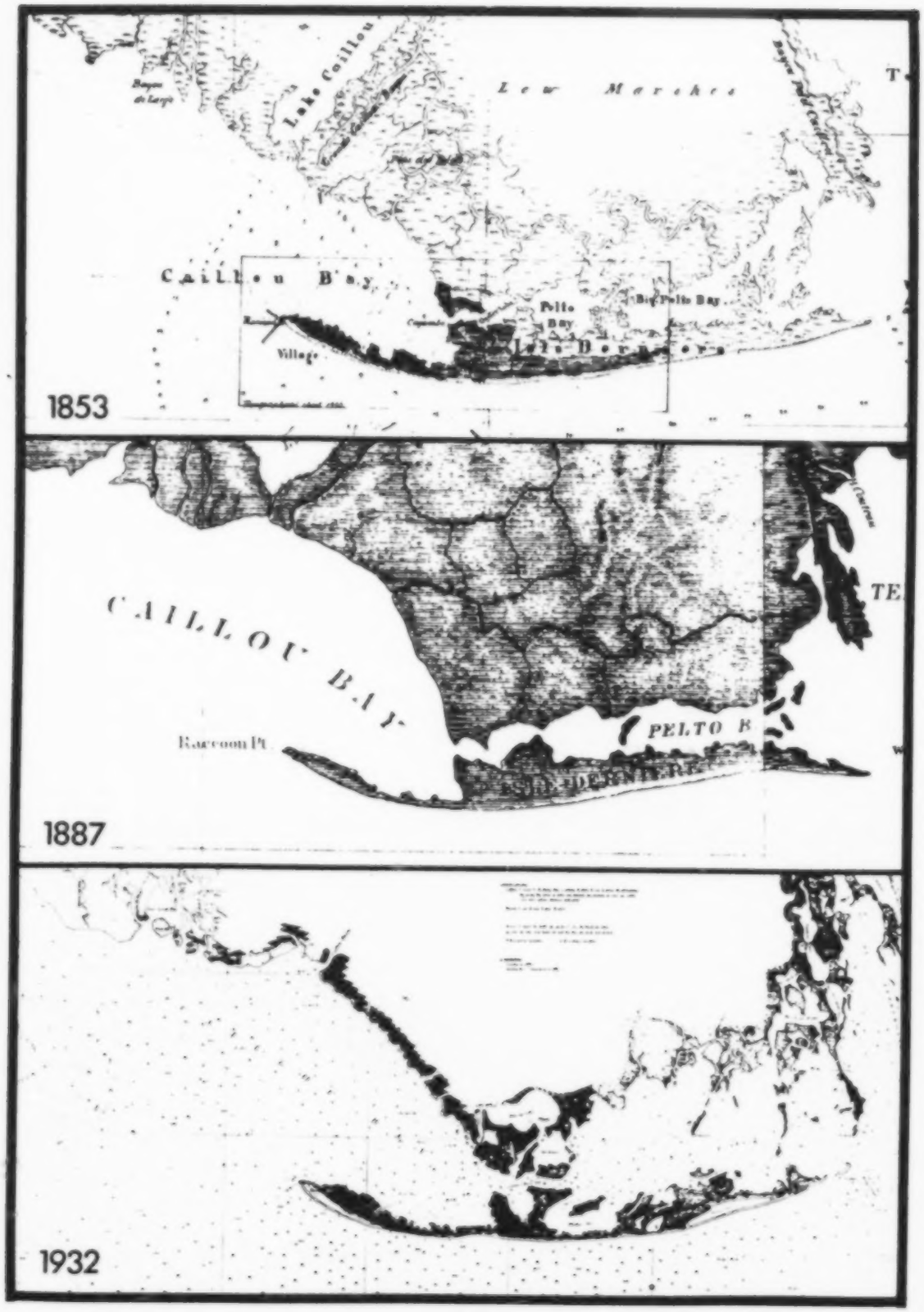


Figure 42. Comparison of maps of the Caillou Bay area dated 1853-1932 showing high degree of connexity between the mainland and Isle Derniere. Also note unbroken configuration of the island. (*Louisiana Reply Brief*, Figure 158A.)

between 1890 and 1934, depths decreased approximately 6 feet. (U.S. Exh. 202, at p. 56.)

D. Neither Caillou Bay nor Caillou Boca provides a transportation route for other than local boat traffic. No boat drawing more than 5 feet of water could traverse Caillou Bay. (U.S. Exh. 191; La. Exh. 50; James Richardson, tr. 5085.)

E. Caillou Boca cannot be considered a "route of passage between two areas of open sea" or "a useful route for international passage" as discussed in the *California* case (381 U.S. 139, 171-172). At most, the feature has utility only as a strait leading from inland waters (Bayou Grand Caillou and Caillou Bay) to inland waters (Caillou Boca/Lake Pelto/Timbalier-Terrebonne Bay). The Federal government's recognition of this fact is manifested in its closure across Caillou Boca for the bay complex to the east. (U.S. Exh. 416-D, Chart 1274; U.S. Exh. 257; La. Exhs. 50, 198, 321 and 322; Dr. Morgan, tr. 2841.)

F. Isle Derniere remained virtually unbroken as reflected on surveys from 1771 until 1934. U.S.C. & G.S. surveys T-5291 and T-5292 indicate the first substantial segmentation of the island based upon evidence in the record. (La. Exhs. 247, 171, 196, 157, 135, 215, 208, 209, 186, 256-A-D, 274, 207, 258, 268, 202; 203; U.S. Exh. 247.)

G. The configuration of the openings has changed since the 1934 surveys, with water depths within the opening shoaling considerably. (Compare Illustration E [1938] with Illustration F [1970] of *Memorandum for the United States in Support of Oral Argument before the Special Master*, pp. 25-26). Present (6/27/70) water depths of 1 to 4 feet compare with depths of 12 to 15 feet in 1938. (La. Exh. 50.)

H. The present configuration of the western Isle Derniere segments (assuming either the Set of 54 Maps or La. Exh. 300 configuration to be correct) displays a flowing continuity with the segments to the east, which continuity reflects the former (pre-segmentation) shape evidenced in 1934 (Chart 198). Were it not for the intervening water gaps, the western segments would be part of the Isle Derniere formation. (La. Exhs. 268, 300; U.S. Exh. 374.)

I. Isle Derniere is the product of marine reworking of former fluvial/deltaic deposits of the Mississippi River. These deposits, which comprise the mainland marshes to the north, underlie portions of all segments of the island as evidenced by Figure 14 of U.S. Exh. 202. (U.S. Exh. 202, at pp. 32 & 33; Dr. Morgan, tr. 2840-41; La. Exh. 181.)

J. Based upon the Isle Derniere configuration shown on *La. Exh.* 300, which includes additional land areas as interpreted from the 1954 Ammann photography, the area of the island segments constitutes approximately 83.5% of the combined area of islands and intervening water gaps *south of the north bank of Caillou Boca*. In each case, the area of the island being considered exceeds that of the intervening water gap. (Ratios vary from 1.20:1 to 81.40:1.) (La. Exhs. 300 & 331.) (Note: underscoring to differentiate parameters, not for emphasis, Findings 54. J to P.)

K. Based upon the Isle Derniere configuration shown on *La. Exh. 300*, the ratios of the lengths of islands to intervening water gaps *from a point north of Caillou Boca* range from 2.15:1 to 16.52:1. Comparing total *length* of island segments (50,100 feet) with total of intervening water gaps (7,500 feet) gives an overall ratio of 6.68:1. The islands therefore comprise approximately 87% of the total island/water gap length. (La. Exh. 300.)

L. Based upon the Isle Derniere configuration shown on *La. Exh. 300*, the islands *west of the central island segment* comprise about 92% of the total island/water gap *area*. (La. Exhs. 300 & 331; *Louisiana Brief*, Vol. V, Part 6, Figure C-2—Island Assimilation Data table.)

M. Based upon the Isle Derniere configuration shown on *La. Exh. 300*, the islands *west of*

the central island segment comprise approximately 89% of the total island/water gap *length*. (La. Exh. 300; *Louisiana Brief*, Vol. V, Part 6, Figure C-2—Island Assimilation Data table.)

N. Based upon the Isle Derniere configuration reflected on Maps 19 and 20 of 41 of the Set of 54 Maps, the ratios of the lengths of islands to intervening water gaps from the northern bank of Caillou Boca to Raccoon Point ranges from 1.97:1 to 18.52:1. Comparing combined island length (48,800 feet) with combined water gap length (10,700 feet) gives an overall ratio of 4.56:1. The islands therefore comprise approximately 82% of the total island/water gap length. (La. Exh. 188A).

O. Based upon the Isle Derniere configuration reflected on Maps 19 and 20 of 41 of the *Set of 54 Maps*, the islands *west of the central island segment* constitute approximately 81% of the total island/water gap *length*. (La. Exh. 188A; *Louisiana Brief*, Vol. V, Part 6 Figure C-2—Island Assimilation Data table.)

P. *Federal measurements* for Finding 54.0, *supra*, yield a figure of 78% for aggergate island *length* compared to total island/water gap length *west of the central island segment* (R.B. Southard, tr. 5202; U.S. Exh. 355A.)

Q. Assuming that the federally proposed 50% "test" for island assimilation bears any validity, the western segments of Isle Derniere would be assimilated to the mainland based upon that test alone.

55. Comparison of island assimilation facts for Isle Derniere segments at Caillou Bay with assimilation facts for the Florida Keys at Florida Bay from the *Report of Albert B. Maris, Special Master* (*United States v. Florida*, No. 52, Original, filed January 18, 1974) indicates that based upon far less favorable facts, the various Florida Keys were assimilated, while with a much stronger case at Caillou Bay assimilation, Louisiana claims were rejected. The segments of Isle Derniere should accordingly be assimilated to preclude unequal treatment of equal states.

A. The following criteria enunciated in Supreme Court decisions were cited as having a bearing on island assimilation problems:

a) Sufficiency of enclosure by islands (363 U.S. 1, 66-67, fn. 108)

b) Shallowness and lack of navigability of enclosed waters (381 U.S. 139, 170-171)

c) Alignment with or ties to the mainland as determined by

(1) origin of islands and resultant connection with mainland
(2) size
(3) distance from mainland

(4) depth and utility of intervening waters
(5) shape of island
(6) relationship of island to configuration or curvature of the coast. (394 U.S. 11, 60-66, fn. 83 & 84).

(Maris Report, p. 39.)

B. In applying the factors outlined in Finding 55.A, *supra*, Judge Maris held that not all the above conditions must be met simultaneously in order to assimilate islands (Maris Report, pp. 46-47). This is contrary to Special Master Armstrong's tentative draft findings (Tentative draft, p. 45).

C. The Maris interpretation is supported by the Supreme Court's language:

> While there is little objective guidance on this question to be found in international law, the question whether a particular island is to be treated as part of the mainland would depend on such factors as its size, its distance from the mainland, the depth and utility of the intervening waters, the shape of the island, and its relationship to the configuration or curvature of the coast.[86] We leave to the Special Master the task of determining in the first instance—*in the light of these and any other relevant criteria* and any evi-

[86] ***This enumeration is intended to be illustrative*** **rather than exhaustive. (394 U.S. 11, 66; emphasis added.)**

> dence he finds it helpful to consider—whether the islands which Louisiana has designated as headlands of bays are so integrally related to the mainland that they are realistically parts of the "coast" within the meaning of the Convention on the Territorial Sea and the Contiguous Zone.

D. Judge Maris held that channels of 1.9 to 2.2 geographic miles in width containing water depths of 7 to 13 feet did not defeat assimilation of certain keys to the mainland. (Maris Report, pp. 54 & 95.)

E. The breaks in Isle Derniere west of the central island segment are 0.2 and 1.1 geographic miles in width and contain water depths of 1/2 to 4 feet. (La. Exh. 50.)

F. The shallow waters of Florida Bay, deemed to be internal waters by Judge Maris, range up to 13 feet in depth (except for non-continuous tidal channels). Those in Caillou Bay range up to 7 feet in depth (except for non-continuous tidal channels). (La. Exh. 50; Maris Report, p. 95.)

G. One of a group of small low-water elevations at Spanish Banks, lying a minimum of .87 geographic miles and an average of 1.5 geographic miles from the nearest land above MHW (Big Spanish Key), was assimilated by Judge Maris for use in delimiting a potential 24-mile baseline. Surrounding water is quite

shallow. See Figures 29 and 35, *supra*. (Maris Report, pp. 46-47.)

H. Although the system of straight baselines was specifically refuted along the Florida coast, Judge Maris held that the coast line (baseline) around the island groups of the lower Florida Keys, the Marquesas Keys and the Dry Tortugas should be drawn between outer islands and low-tide elevations of the groups, thus enclosing inland waters of the State of Florida. See Figure 15, *supra*, showing similar treatment at the Florida Keys by the Department of Commerce in the 1940 Census. (Maris Report, pp. 52, 53, and 55; La. Exh. 52(1).)

I. The Master's Report negated the Federal government's argument that assimilation of the lower keys to the mainland might be justified because they are joined to the mainland by a highway (394 U.S. 11, at 72, fn. 95).

a) Closures between the keys follow the seawardmost natural entrances of the islands, some of which are not even connected by the highway. (Maris Report, p. 95 — see closures at Indian Key Channel.)

b) The highway extends to Key West, while the area lying west of Knight Key was specifically held not to be assimilable. The highway was not discussed as a factor to be considered in such assimilation, although geologic connection was considered. (Maris Report, pp. 47 & 97.)

56. The waterbody enclosed by a line from x=2,117,-317; y=143,491 to x=2,076,201; y=189,799 meets all juridical bay requirements under Article 7 of the Territorial Sea Convention, assuming that Isle Derniere constitutes an integral part of the mainland (Finding 54, *supra*). See Figure 43.

A. The point on the low-water line of the westernmost Isle Derniere segment known as Raccoon Point at:

x=2,117,317
y= 143,491

constitutes an identifiable point, being the apex of a salient and the maximum seaward extension of the shoreline of Isle Derniere. (Dr. Melamid, p. 3278; La. Exh. 181D.)

B. The point on the low-water line of Caillou Bay's northern periphery at:

x=2,076,201
y= 189,799

is an identifiable point on the shore at which there is an appreciable change in the direction of the general trend of the coast. This point is verified by bisecting the angle formed by generalizing the bay shore and the Gulf shore seaward of the headland landform. (Dr. Melamid, tr. 3278; La. Exh. 181D; *Louisiana Brief*, Vol. V, Part 6, Figure C-11.)

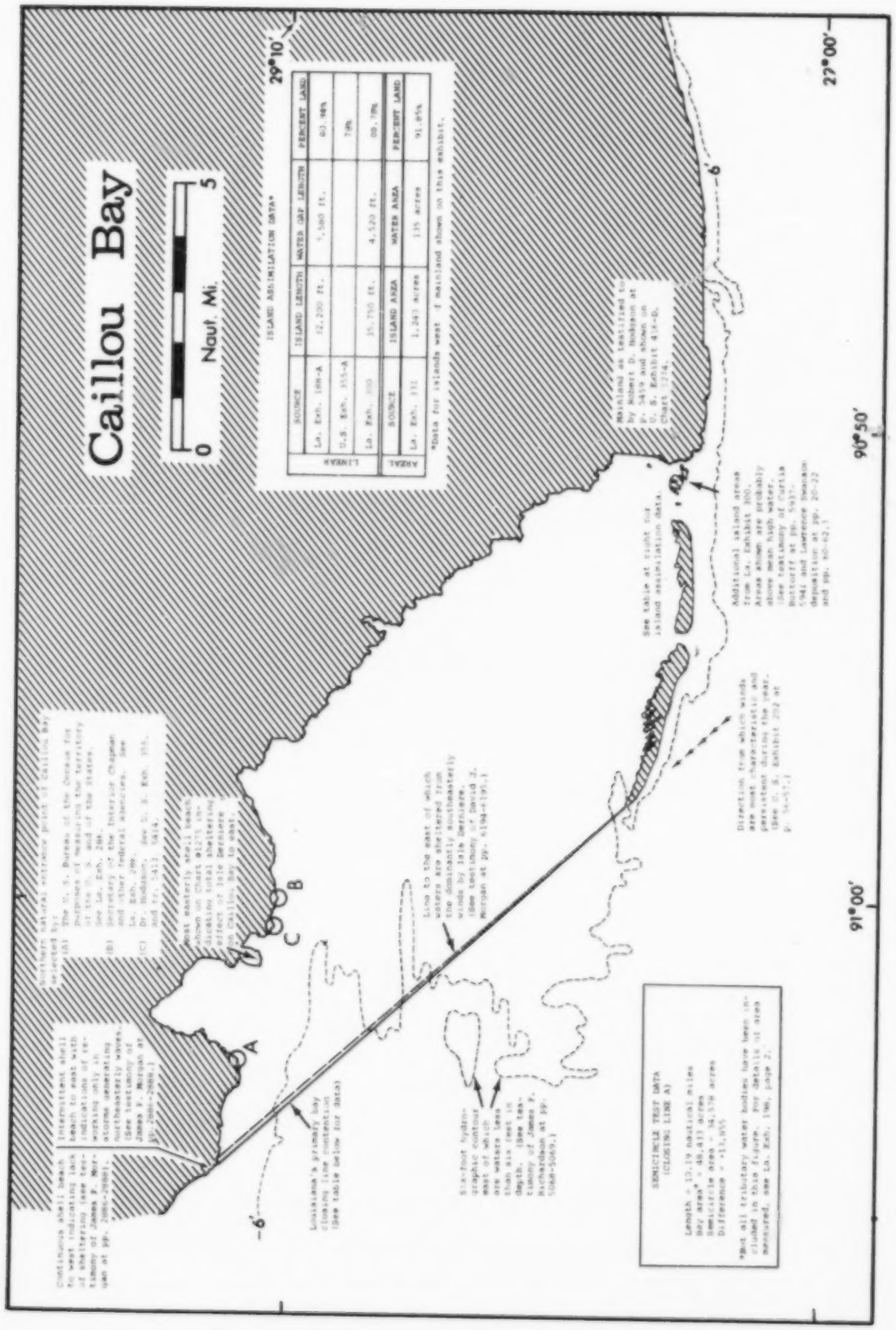


Figure 43. Partial Summary of Caillou Bay Evidence. Figure C-2 from *Louisiana Brief*, Volume V, Part 6, following page 8.

C. This point (x=2,076,201; y=189,799) is the outermost point which bears a relationship to the geographic characteristics and configuration of Caillou Bay. (D. J. Morgan, tr. 6191-6203; U.S. Exh. 386; La. Exh. 339.)

D. A line connecting the above-designated points and shown on La. Exh. 198 as Closing Line A encloses landlocked waters based upon the penetration in proportion to width of mouth [assuming Isle Derniere forms the southern periphery of Caillou Bay]. (La. Exhs. 198, 229, and 232.)

E. The closure described in Finding 56.D, *supra*, designated A on La. Exh. 198, encloses sufficient bay water area to meet semicircle test requirements under even the most conservative bay area delimitation. (La. Exh. 198; Philip Whitaker, tr. 3985-87.)

F. The area lying landward of Closure A is sheltered from the dominant southeasterly winds by Isle Derniere. This characteristic is reflected by the paucity of shell beaches to the east of Louisiana's primary northern headland location near Bayou Goreau and their prevalence to the west. (Dr. Morgan, tr. 2835-38 and 2886-88; D. J. Morgan, tr. 6194-95; La. Exhs. 50, 198; U. S. Exh. 202, p. 56 and Figure 24, p. 57; *Louisiana Brief*, Vol. V, Part 6, Figure C-2.)

G. Closure A roughly parallels the 6-foot hydro-

graphic contour; waters lying landward are dominantly less than 6 feet. Average water depth for the bay appears on Chart 1275 to be about 4 feet. Such shallow water depths have a tendency to dissipate wave energy in the absence of actual land above water. (U.S. Exh. 202, Figure 19, p. 45; D. J. Morgan, tr. 6194-95; La. Exh. 50.)

57. Louisiana's alternative Caillou Bay closing lines designated as X, Y, and Z of La. Exh. 198 meet all juridical bay requirements under Article 7 of the Territorial Sea Convention.

A. Points on the low-water line of the northern shore of Caillou Bay at the following coordinates constitute identifiable points on landforms which bear a relationship to the indentation:

x=2,085,370
y= 187,372

x=2,098,954
y= 185,105

x=2,106,412
y= 183,216

(La. Exhs. 50 & 198.)

B. Louisiana's alternative closures at Caillou Bay (designated X, Y, and Z on sheet 2 of La. Exh. 198) all delimit landlocked waters based upon the penetration in proportion to width of mouth [assuming that Isle Derniere forms the

southern periphery of Caillou Bay]. (La. Exh. 198.)

C. Louisiana's alternative closures at Caillou Bay (designated X, Y, and Z on sheet 2 of La. Exh. 198) all meet semicircle test requirements based upon conservative planimetry techniques. (La. Exh. 198; Philip Whitaker, tr. 3985-91.)

* * * * *

The Supreme Court, in its reference to appointment of a Special Master, directed that his findings should be consistent with its opinion (394 U.S. 11, 78). The findings rejecting Louisiana's claims that Caillou Bay is a juridical bay have been accordingly based on an appreciation of the Supreme Court's ruling as to that area (394 U.S. 11, 67 n. 88). If the Supreme Court does not agree that the Master was compelled to reach the findings and conclusions rejecting Caillou Bay's status as a juridical bay because of this footnote, then the Special Master is requested to respond to Louisiana's requested Findings 58 through 61, *infra*, which correspond to Findings 54-57, *supra*.

* * * * *

58. See Finding 54, *supra*.

59. See Finding 55, *supra*.

60. See Finding 56, *supra*.

61. See Finding 57, *supra*.

62. In the event that the Isle Dernire assimilation question is answered negatively (Finding 54 or 58,

supra), the segments of the island may be treated as screening islands lying at the mouth of a bay. The bay thus delimited meets all requirements of Article 7 of the Territorial Sea Convention.

A. The indentation delimited without use of the western Isle Derniere segments constitutes a sufficiently landlocked and well-marked feature, as ascertained by comparison with Biscayne Bay, Florida, delimited in U.S. Exhibit 416-D, to qualify as "more than a mere curvature of the coast" under the Territorial Sea Convention (*Louisiana Brief*, Vol. V, Part 6, Figure C-5, following p. 27; La. Exh. 154, p. 212—quote from G. E. Pearcy, Geographer of the State Department,

> The keys along the southern coast of Florida opposite and south of Miami give Biscayne Bay a number of mouths and account for its status as a body of internal water. Without these keys it would be little more than an elongated, irregular indentation in the coast.

B. Closing lines from the vicinity of either of the following points at the western terminus of the central Isle Derniere segment:

x=2,157,920	or	x=2,156,802
y= 135,521		y= 137,007

to a point on the north shore of Caillou Bay at:

x=2,076,201
y= 189,799

intersect islands lying to the west of the central island segment shown on La. Exh. 300. (La. Exh. 300; *Louisiana Brief*, Vol. V, Part 6, Figure C-2A, following p. 27.)

C. A closing line from a point on the western terminus of the central island segment to each consecutive island segment in the Isle Derniere chain westward and from Raccoon Point at

x=2,117,317	to	x=2,076,201
y= 143,491		y= 189,799

on the northern mainland shore meets semicircle test requirements under the most conservative water area measurement technique, as follows:

Summation of water gaps from La. Exh. 300: 250 + 120 + 2,970 +1,180 = 4,520 ft. = 0.74 na. mi. Total length of closure (Line A, La. Exh. 198 + above):

10.19 + 0.74 = 10.93 na. mi. = 12.59 stat. mi.

Hypothetical semicircle ($A = \frac{1}{2}\ 11\ r^2$)

$12.59\ 2 \times 1.5708 = 62.23$ sq. stat. mi. = 2

39,827 acres

Planimetered bay area (La. Exh. 198, sheet 2):

48,433 acres

Difference:

+8,606 acres, therefore meets semicircle test.

D. Closing lines constructed between the points at the western terminus of the central Isle Dernière segment designated in 62B, *supra*, and the alternative headlands designated in 57A, *supra*, intersect islands lying to the west of the central segment shown on La. Exh. 300. (La. Exh. 300; *Louisiana Brief*, Vol. V, Part 6, Figure C-24, following p. 27.)

E. Louisiana's alternative closures at Caillou Bay (designated X, Y, and Z on sheet 2 of La. Exh. 198) all appear to meet semicircle test requirements based upon comparison of differences shown on sheet 2 of La. Exh. 198 with the additional hypothetical semicircle area generated in the calculation in 62.C, *supra*, for Line A (approx. 4,250 acres additional area).

Atchafalaya Bay

63. Atchafalaya Bay is an overlarge bay, having a mouth in excess of 24 miles. Therefore, a line 24 geographic miles in length should be drawn at the mouth of the bay in such a manner as to enclose the maximum possible water area, in accordance with Article 7(5) of the Convention. See Figure 44, *supra*.

A. The tightly clustered group of low-water ele-

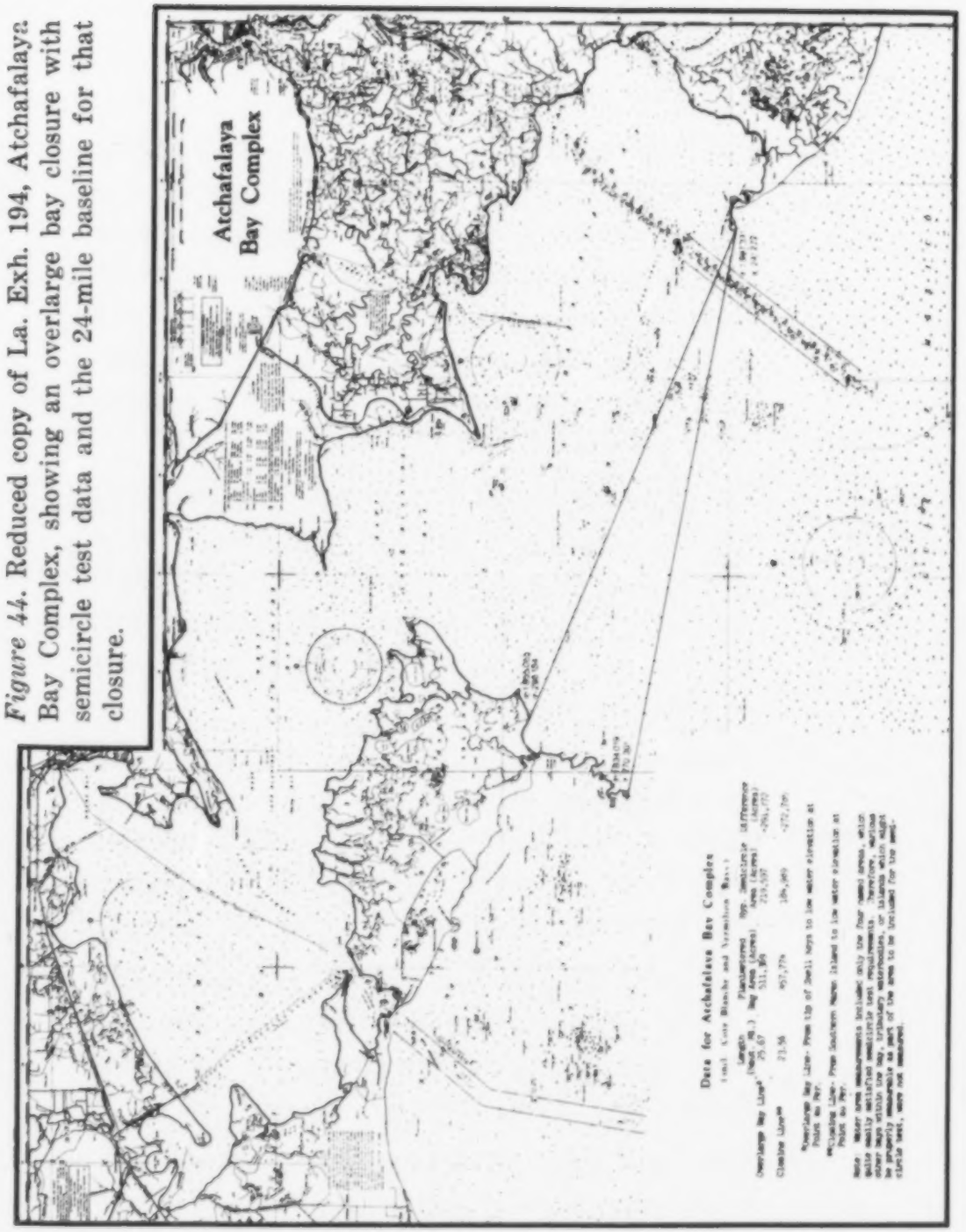


Figure 44. Reduced copy of La. Exh. 194, Atchafalaya Bay Complex, showing an overlarge bay closure with semicircle test data and the 24-mile baseline for that closure.

vations lying west of Point au Fer form a continuous reef mass which underlies Point au Fer. (Dr. Morgan, tr. 2916.)

B. Chart information controls absent clear error in the charts. Consequently, the chart practice of aggregating very closely grouped islets or low-water elevations as shown at the Point au Fer low-water feature and at Shell Keys and delimiting such aggregations as a single feature with a common low-water line is reasonable. (La. Exh. 194; U.S. Exh. 387.)

C. The tightly grouped islets comprising the Point au Fer low-water feature are larger, as a whole, than the intervening water area separating it from the mainland and, accordingly, the feature may be deemed an integral part of the mainland.

D. Facts supporting assimilation (water depths of 4 feet and distance less than 0.4 na. mi. from the mainland) compare quite favorably with those presented and accepted in the Florida Keys assimilation (Finding 55, *supra*).

E. The point lying at x = 1,987,371; y = 241,272 on the above feature constitutes an approximate eastern natural entrance point for Atchafalaya Bay. (Dr. Melamid, tr. 3301-03.)

F. The Shell Keys consisting of islands and low-water elevations lying south of Marsh Island are realistically considered as part of the mainland, and the outermost island or any of a

number of more inward island points would reasonably serve as the western natural entrance point of the bay. (U.S. Exh. 387; La. Exh. 194; Dr. Melamid, tr. 3305-06.)

G. Any lines joining the low-water elevation lying off Point au Fer with the Shell Keys reef features would meet semicircle test requirements. (Philip Whitaker, tr. 3991-93; La. Exh. 194—see Figure 44.)

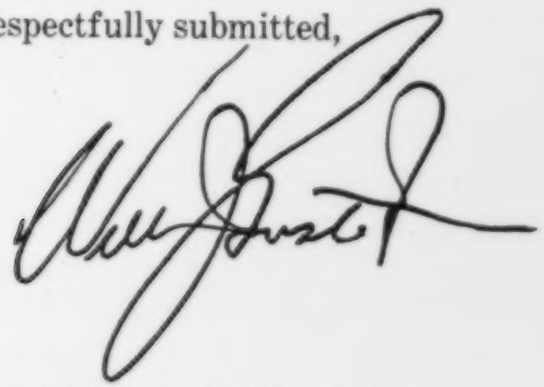
H. If the low-water elevation near Point au Fer at x = 1,987,371; y = 24,272 is realistically considered part of the mainland, a 24-mile line drawn from there at Marsh Island should be used as a baseline for projecting the 3-mile belt, except that it would not be used to contract 3-mile belts generated by islands or low-water elevations lying more seaward. See Figure 44 for location.

I. Even if the Shell Keys and the low-water elevation near Point au Fer should not realistically be treated as part of the mainland, the mainland of Point au Fer at x = 1,993,420; y = 241,930 and the mainland at Mound Point would constitute natural entrance points of an indentation which is well marked, containing landlocked waters, forming more than a mrer curvature of the coast, with a mouth in excess of 24 miles, and an area which would satisfy the semicircle test. Therefore, in any event, a closing line of 24 miles would be justi-

fied. (See La. Exh. 194, and testimony of Mr. Whitaker.)

J. If the low-water elevation near Point au Fer is not realistically considered as part of the mainland, nonetheless a 24-mile line should be drawn from the mainland on Point au Fer at x = 1,993,420; y = 241,930 to a point 24 geographic miles distant on Marsh Island seaward of South Point. Such 24-mile line should serve as a baseline for projection of the 3-mile line with the exception of more seawardly lying islands or low-water elevations having effect in projecting additional 3-mile belts.

Respectfully submitted,



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Special Assistant Attorneys General

May 13, 1974

PROOF OF SERVICE

I, the undersigned, authorized to act on behalf of the State of Louisiana, certify that copies of the foregoing motion have been properly served on the 13th day of May, 1974 by mailing copies, sufficient postage prepaid, to the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D.C.

Supreme Court, U. S.
FILED
NOV 20 1974
MICHAEL RODAK, JR., CLERK

No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,
Defendants.

APPENDICES II AND III TO THE EXCEPTIONS OF THE STATE OF LOUISIANA TO THE REPORT OF THE SPECIAL MASTER FILED JULY 31, 1974, AND BRIEF IN SUPPORT OF EXCEPTIONS

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APPENDIX II

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APPENDIX III

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No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM 1974

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,
Defendants.

APPENDIX II, Part 1

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TRANSCRIPT

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	VIII	979-995[1]
		996-1103[2]
Mr. J. Y. Christmas	VIII	1109-1122[1]
	IX	1124-1142[1]
		1143-1160[2]
Mr. John Lay	IX	1161-1210[1]
		1211-1242[2]
Mr. Richard Yancey	IX	1244-1260[1]
		1261-1263[2]
Mr. Jack Hood	IX	1269-1284[1]
Mr. Ory Poret	X	1476-1492[1]
	XI	1496-1529[1]
		1530-1571[2]
Mr. Hatley Harrison, Jr.	XI	1578-1604[1]
	XII	1611-1633[1]
		1633-1704[2]
	XIII	1707-1725[2]
Dr. Lyle S. St. Amant	XIII	1729-1742[1]
		1742-1746[2]
		1746-1747[3]

[3] Redirect
[4] Recross

Dr. John Loos	XIII	1748-1812[1]
	XIV	1816-1845[1]
		1845-1855[2]
		1855-1859[3]
Mr. Curtis L. Buttorff	XIV	1871-1950[1]
	XV	1977-2034[1]
	XVI	2060-2081[1]
		2081-2178[2]
	XVII	2185-2274[2]
		2275-2289[3]
		2289-2298[4]
Mr. Leo W. Hough	XVI	2040-2050[1]
Dr. James P. Morgan	XVIII	2325-2441[1]
	XX	2646-2770[1]
	XXI	2775-2904[1]
	XXII	2907-2960[1]
		2961-3034[2]
	XXIII	3038-3165[2]
	XXIV	3169-3209[2]
Dr. Alexander Melamid	XXIV	3217-3224[1]
		3224-3237[5]
		3237-3283[1]
	XXV	3292-3337[1]
		3337-3413[2]
Mr. Philip Larimore	XXV	3414-3420[1]
	XXVI	3424-3558[1]
	XXVII	3586-3629[1]
		3629-3694[2]
Mr. David Morgan	XXVIII	3715-3814[1]
	XIX	3833-3877[1]
		3880-3926[2]
		3929-3938[2]
Mr. Philip L. Whitaker	XXX	3945-4047[1]
		4047-4064[2]

[5] Traverse

Mr. Lindsay P. Peperone	XXX	4081-4091[1]
		4091-4094[2]
		4094-4095[3]
Mr. Francis Zimmerman	XXXI	4132-4179[1]
		4179-4183[2]
Mr. John L. Rankin	XXXI	4184-4212[1]
		4212-4217[2]

IN WASHINGTON, D.C.

Mr. Arthur I. Cooperman	XXXII	4265-4287[1]
Comm. R. Lawrence Swanson	XXXII	4287-4330[1]
		4330-4351[2]
		4351-4353[3]
Mr. Bennett G. Jones	XXXII	4353-4365[1]
	XXXIII	4413-4449[1]
		4449-4476[2]
		4476-4484[3]
Mr. Harland R. Cravat	XXXIII	4485-4521[1]
	XXXV	4556-4623[1]
		4624-4650[2]
		4650-4655[3]
		4655-4656[4]
		4657[6]
		4657[7]
Mr. Joseph K. Wilson	XXXV	4665-4676[1]
		4676-4677[2]
Dr. Charles R. Kolb	XXXV	4678-4692[1]
	XXXVI	4698-4759[1]
Dr. Roger T. Saucier	XXXVI	4759-4811[1]
		4812-4843[2]
Mr. Buford K. Meade	XXXVII	4853-4867[1]
	XXXVII	4867-4879[2]
		4879-4881[3]

[6] Further redirect
[7] Further recross

		4882-4884[4]
		4884[6]
Dr. Louis Henkin	XXXVII	4887-4927[1]
		4927-4939[2]
Mr. Donald J. Simon	XXXVII	4939-4943[1]
		4943-4947[2]
Mr. James F. Richardson	XXXVII	4947-5004[1]
	XXXVIII	5035-5037[1]
		5037-5114[2]
		5114-5121[3]
Mr. Rupert B. Southard	XXXVIII	5122-5131[1]
	XXXIX	5140-5219[1]
		5219-5251[2]
Dr. Robert D. Hodgson	XXXIX	5251-5285[1]
	XL	5300-5451[1]
	XLI	5454-5516[2]
		5516-5551[3]

IN BATON ROUGE

Mr. Philip B. Larimore	XLII	5572-5722[1]
	XLIII	5731-5824[2]
		5828-5835[2]
Mr. Curtis Buttorff	XLIII	5836-5887[1]
		5887-5908[2]
	XLIV	5918-5952[2]
Mr. David J. Morgan	XLIV	5954-6080[1]
		6081-6128[2]
	XLV	6132-6204[2]
Dr. James P. Morgan	XLV	6206-6364[1]
	XLVI	6365-6399[2]

DEPOSITIONS

Mr. James F. Richardson	La. Exh. 123
Dr. A. Joseph Wraight	La. Exh. 123
Mr. Samuel J. Nunez	La. Exh. 145, also introduced as La. Exh. 55, tab 195
Mr. Chin Dy Hoy	La. Exh. 146, also introduced as La. Exh. 55, tab 197
Mr. Abraham Schouest	La. Exh. 147, also introduced as La. Exh. 55, tab 198
Capt. Emanuel Von Lubbe	La. Exh. 148, also introduced as La. Exh. 55, tab 194
Mr. Landry Cheramie	La. Exh. 149, also introduced as La. Exh. 55, tab 196
Mr. Bennett G. Jones	U.S. Exhs. 268A and 268B
Mr. Gordon Atwater	U. S. Exh. 269
Mr. Newton Beauvais	U.S. Exh. 270
Cmdr. R. Lawrence Swanson	U.S. Exh. 417

APPENDIX II, Part 2

INDEX TO THE EVIDENCE INTRODUCED BY THE STATE OF LOUISIANA IN THE PROCEEDING BEFORE WALTER P. ARMSTRONG, JR., SPECIAL MASTER

Exhibit 1 Vita of Dr. James P. Morgan

Exhibit 2 LPI 837. Official map of Louisiana, 1969 edition showing geological areas.

Exhibit 3 LPI 1141. Charles G. Holle, *Sedimentation at the Mouth of the Mississippi River, in* PROCEEDINGS OF SECOND CONFERENCE ON COASTAL ENGINEERING, p. 111 (J. W. Johnson ed. 1951).

Exhibit 4 J. P. Morgan, *Ephemeral Estuaries of the Deltaic Environment, in* ESTUARIES, p. 115 (G. H. Lauff ed. 1967).

Exhibit 5 J. P. Morgan, "Deltas—A Résumé," *Journal of Geological Education*, Vol. XVIII, No. 3, pp. 107-117 (May, 1970).

Exhibit 6 J. P. Morgan, J. M. Coleman and S. M. Gagliano, *Mudlumps at the Mouth of South Pass, Mississippi River; Sedimentology, Paleontology, Structure, Origin and Relation to Deltaic Processes,* LOUISIANA STATE UNIVERSITY STUDIES; COASTAL STUDIES SERIES, No. 10 (1963).

Exhibit 7 J. P. Morgan, Transparencies, Vol. 1, GP-1 through GP-31, inclusive, as follows:

LIST OF OVERHEAD TRANSPARENCY ILLUSTRATIONS TO ACCOMPANY TESTIMONY OF

JAMES P. MORGAN CONCERNING GENERAL GEOLOGY, GEOLOGIC PROCESSES AND RESULTING MORPHOLOGY OF THE MISSISSIPPI RIVER DELTA.

(These transparencies were made by James P. Morgan for teaching purposes and for illustrating scientific publications. Where taken from other sources, references are given.)

Chronologic Number of Illustration	*Louisiana Preliminary Identifying Number or Citation*	*Description of Illustration*
GP-1	604	Drainage basin of the Mississippi River.
GP-2	596	Diagrammatic illustration of the longitudinal stream profile.
GP-3	1201	Geologic time scale of the Quaternary Period.
GP-4	1200	Longitudinal profile of the Mississippi River comparing present Gulf level with glacial stage Gulf level.
GP-5	591	Generalized geologic map of Louisiana in relation to glacial stage entrenched Mississippi River.
GP-6	601	Movement of stream load, suspended and bed load.
GP-7	1199	Conventional depositional sedimentary sequence in a water body.

GP-8	600	Diagrammatic illustration of a "Gilbert-type" delta. After G. K. Gilbert, "Lake Bonneville", 1890.
GP-9	598	Idealized concept of delta formation. Stages A-D.
GP-10	605	Hydrography at the mouth of an idealized distributary.
GP-11	594	Longitudinal profiles along an idealized distributary.
GP-12	595	Transverse profiles across an idealized distributary.
GP-13	599	Idealized concept of delta formation. Stages E-F.
GP-14	602	Idealized concept of delta formation. Stage G.
GP-15	597	Idealized representation of depositional environments and sediment types at a distributary mouth.
GP-16	590	Historical sequences of Mississippi Delta lobes from 4600 years (before present) to present time. Modified from Kolb and Van Lopik, 1958.
GP-17	592	Modern Mississippi River subdeltas compared with maps of 1838 and 1960.
GP-18	603	Three-dimensional illustration of the Birdfoot Delta of the Mississippi River. Modified from H. N. Fisk, 1961.

GP-19	593	Schematic diagram showing deltaic progradation in a subsiding delta.
GP-20	589	Stages in the development of interdistributary bays in an abandoned distributary system. From J. P. Morgan, 1967.
GP-21	Fig. 3 "Estuaries"	West Bay in 1816. From J. P. Morgan, 1967.
GP-22	Fig. 4 "Estuaries"	West Bay in 1922. From J. P. Morgan, 1967.
GP-23	Fig. 5 "Estuaries"	West Bay in 1958. From J. P. Morgan, 1967.
GP-24	Fig. 8 "Deltas"	Cubit's Crevasse into Bay Rondo in 1873. From J. P. Morgan, 1970.
GP-25	Fig. 8 "Deltas"	Cubit's Crevasse into Bay Rondo in 1901. From J. P. Morgan, 1970.
GP-26	Fig. 8 "Deltas"	Cubit's Crevasse into Bay Rondo in 1911. From J. P. Morgan, 1970.
GP-27	Fig. 8 "Deltas"	Cubit's Crevasse into Bay Rondo in 1925. From J. P. Morgan, 1970.
GP-28	Fig. 8 "Deltas"	Cubit's Crevasse into Bay Rondo in 1933. From J. P. Morgan, 1970.
GP-29	Fig. 8 "Deltas"	Cubit's Crevasse into Bay Rondo in 1968. From J. P. Morgan, 1970.

GP-30	Fig. 10 "Deltas"	Isopach map showing sedimentary mass in Bay Rondo resulting from Cubit's Crevasse. From J. P. Morgan, 1970.
GP-31	Fig. 7 "Estuaries"	Interdeltaic estuarine basin, Mississippi Delta. From J. P. Morgan, 1967.

REFERENCES TO SOURCES CITED

Fish, H. N., *Bar-finger Sands of the Mississippi Delta. in* GEOMETRY OF SANDSTONE BODIES - A SYMPOSIUM. Tulsa: Am. Assoc. Petroleum Geologists (1961), pp. 29-52.

Gilbert, G. K., Lake Bonneville: United States Geological Survey (1890), Monograph No. 1.

Kolb, C. R., and Van Lopic, J. R., *Geology of the Mississippi River Deltaic Plain, Southeastern Louisiana.* U. S. ARMY CORPS OF ENGINEERS, WATERWAYS EXPT. STA. TECH. REPT. Vicksburg (1958), pp. 3-483 and 3-484.

Morgan, J. P., *Ephemeral Estuaries of the Deltaic Environment*, in ESTUARIES, G. H. Lauff ed.: American Assoc. for Advancement of Science (1967), pp. 115-120.

Morgan, J. P., "Deltas—a Résumé," *Journal of Geological Education.* Vol. XVIII, No. 3 (May, 1970), pp. 107-117.

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Exhibit 8	U.S.C. & G.S. Chart No. 1272 - 22nd edition, December 2, 1968.
Exhibit 9	Photographs of Dr. J. P. Morgan - Volume 2, 1 through 41, inclusive, as follows:

LIST OF PHOTOGRAPHS TO ACCOMPANY TESTIMONY OF JAMES P. MORGAN CONCERNING GENERAL GEOLOGY AND MORPHOLOGY OF THE MISSISSIPPI RIVER DELTA

(All photographs taken by James P. Morgan)

Chronologic Number of Illustration	*Louisiana Preliminary Identifying Number*	*Date of Photograph*	*Description of Photograph*
1	100	6-26-69	Cubit's Crevasse opening from Mississippi River (background)
2	99	6-26-69	Cubit's Crevasse opening from Mississippi River (background) into Bay Rondo area to the east of the Mississippi Delta.
3	127	8-27-69	Cubit's Crevasse area. Mouth of Bienvenue Pass in right foreground, Mississippi Delta.
4	128	8-27-69	Mouth of Dead Woman's Pass (middle background), Cubit's Crevasse area, Mississippi Delta.
5	129	8-27-69	Mouth of Dead Woman's Pass (middle ground) Mississippi Delta.
6	102	8-27-69	Town of Venice, La. and the Jump (background) leading into West Bay. Inundation and property damage resulting from Hurricane Camille.

7	137	9-3-69	View northeast of mouth of Pass Du Bois, Mississippi Delta. West Bay area in background.
8	136	9-3-69	View southeast of mouth of Pass Du Bois, Mississippi Delta. Aerial view of area shown on TL-185 through 189.
9	135	9-3-69	View north at mouth of Pass Du Bois, Mississippi Delta. Ground photograph showing exhumed marsh and shell piled up by wave action resulting from Hurricane Camille.
10	131	9-3-69	Ground photo. View north at mouth of Pass Du Bois, Mississippi Delta.
11	134	9-3-69	View northwest at mouth of Pass Du Bois, Mississippi Delta. Ground photo of exhumed marsh and scattered shell resulting from Hurricane Camille.
12	132	9-3-69	View north at mouth of Pass Du Bois, Mississippi Delta. Ground photograph.
13	133	9-3-69	View northeast at mouth

			of Pass Du Bois, Mississippi Delta. Ground photograph of exhumed marsh.
14	120	8-27-69	View downstream along South Pass, Mississippi Delta. Note sedimentation in East Bay (right) through breaks in the West Bank of South Pass.
15	167	9-3-69	View of west bank, South Pass, Mississippi Delta. East Bay in foreground.
16	119	8-27-69	Sedimentation in East Bay, Mississippi Delta, through breaks in the West bank of South pass.
17	118	8-27-69	West bank of South Pass, Mississippi Delta (foreground). The Crevasse into Garden Island Bay in background.
18	117	8-27-69	West bank of South Pass, Mississippi Delta (foreground). Note lighthouse on the levee at right of photo.
19	75	6-26-69	Sediment-laden water flowing across Southwest Pass levees into West Bay, Mississippi Delta.
20	160	9-3-69	West bank of South Pass, Mississippi Delta. East Bay to right.

21	158	9-3-69	Crevasse opening into East Bay from South Pass, Mississippi Delta. Midway between Upper Cave Light and Old Grand Bayou Light.
22	163	9-3-69	Mud flats and marsh extending into East Bay from west bank of South pass, Mississippi Delta.
23	170	9-3-69	View looking east-northeast across shoal in East Bay, Mississippi Delta. South Pass and fresh water reservoir in distance.
24	105	8-27-69	Mouth of Southwest Pass (right background) and sand spit extending into East Bay, Mississippi Delta.
25	145	9-3-69	East Bay sand spit. Southwest Pass and levees in background.
26	144	9-3-69	East Bay sand pit. Southwest Pass and levees in background.
27	143	9-3-69	East Bay sand spit. Southwest Pass and levees in background.
28	104	8-27-69	View south along sand spit in East Bay. South-

			west Pass, Mississippi River in right of photo.
29	76	6-26-69	View West toward Mouth of Southwest Pass showing sand spit extending northward into East Bay, Mississippi Delta.
30	140	9-3-69	East bank of Southwest Pass, Mississippi Delta in foreground. Note sand spit extending into East Bay (middle ground).
31	146	9-3-69	North end of sand spit in East Bay. Southwest Pass in background. Double Bayou in distance.
32	112	8-27-69	View northwest across Joseph Bayou area. Southwest Pass in background, Mississippi Delta.
33	150	9-3-69	Joseph Bayou area. Upper end of East Bay, Mississippi Delta. Head of Passes in background, Joseph Bayou in foreground.
34	152	9-3-69	View south down Joseph Bayou into East Bay, Mississippi Delta.
35	149	9-3-69	View east across mouth of Joseph Bayou, Mississippi Delta. South Pass in background.

36	151	9-3-69	Joseph Bayou area. Upper end of East Bay, Mississippi Delta. Head of Passes in background, Joseph Bayou in foreground.
37	154	9-3-69	Upper (northern) end of East Bay, Mississippi Delta. Head of Passes in background.
38	116	8-27-69	View northwest across Joseph Bayou area, Mississippi Delta.
39	113	8-27-69	View west across south end of Joseph Bayou area, Mississippi Delta.
40	147	9-3-69	View southeast across East Bay. Mouth of Joseph Bayou in center of photograph. South Pass in distance.
41	148	9-3-69	View southeast across East Bay. Mouth of Joseph Bayou in left middle ground. South Pass in distance.

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Exhibit 10	J. P. Morgan, *Genesis and Paleontology of the Mississippi River Mudlumps*, Louisiana Geological Survey, Bulletin No. 35 (1961).
Exhibit 10-A	Exhibits to James P. Morgan, *Gene-*

sis and Paleontology of the Mississippi River Mudlumps, Louisiana Geological Survey, Bulletin No. 35 (1961).

Exhibit 11 J. P. Morgan, J. R. Coleman and S. M. Gagliano, *Mudlumps: Diapiric Structures in Mississippi Delta Sediments, in* DIAPIRISM AND DIAPIRS, Am. Assoc. Petroleum Geologists, Memoir No. 8, pp. 145-161 (1968).

Exhibit 12 Photographs by Dr. J. P. Morgan of Mudlumps, Vol. 3, 1 through 52, inclusive, as follows:

LIST OF PHOTOGRAPHS AND ILLUSTRATIONS TO ACCOMPANY TESTIMONY OF JAMES P. MORGAN CONCERNING MUDLUMPS AT THE MOUTHS OF THE MISSISSIPPI RIVER

(all illustrations or photographs by James P. Morgan unless otherwise annotated)

Chronologic Number of Illustration	*Louisiana Preliminary Identifying Number or Citation*	*Date of Photograph or Publication*	*Description of Photograph or Illustration*
1	Fig. 1, Mem. 8	1968	Areas of mudlump development at major distributary mouths, Mississippi River Delta.
2	98	6-26-69	Mudlump islands seaward from Pass A Loutre-North Pass, Mississippi Delta (background).

3	97	6-26-69	Mudlump island seaward from mouth of Pass A Loutre, Mississippi Delta.
4	95	6-26-69	Mudlump islands seaward from mouth of Pass A Loutre, Mississippi Delta.
5	96	6-26-69	Detail of largest mudlump island off mouth of Pass A Loutre, Mississippi Delta. Island is also shown on photos TL-54 and TL-56.
6	Fig. 6, Bull. 35	Sept. 61	Schematic cross section of typical mudlump, indicating stratigraphic and structural characteristics.
7	Fig. 4, Bull. 35	Sept. 61	Furrowed surface appearance of mudlump island. Aerial photograph of NP-3 taken April 1948 (H. N. Fisk) [1].
8	93	6-26-69	Mudlump seaward from mouth of Northeast Pass, Mississippi Delta. See photo TL-51 for relationship to land.
9	92	6-26-69	Ground photograph showing details of mudlump island at mouth of Northeast Pass, Mississippi Delta. See photo TL-51 for relationship to land.
10	125	8-27-69	Southeast Pass mudlump

[1] Photograph taken April 1948 by H. N. Fisk.

			islands with the mouth of the pass in background. See TL-132.
11	87	6-26-69	Mouth of Southeast Pass, Mississippi Delta (background) and some of the mudlump islands.
12	124	8-27-69	Southeast Pass mudlump islands. View taken looking seaward. See TL-134.
13	85	6-26-69	Mudlump seaward from the mouth of Southeast Pass, Mississippi Delta. Old Balize Bayou in left background.
14	89	6-26-69	Detail of mudlump island nearest mouth of Southeast Pass, Mississippi Delta. (See photo TL-40, TL-45 and TL-46 also of same island.)
15	91	6-26-69	Same as TL-43. Detail of mudlump island nearest mouth of Southeast Pass, Mississippi Delta (See photo TL-40).
16	90	6-26-69	Same as TL-43. Detail of mudlump island nearest mouth of Southeast Pass, Mississippi Delta (See photo TL-40).
17	88	6-26-69	Group of three mudlump

			islands seaward from the mouth of Old Balize Bayou, Mississippi Delta.
18	84	6-26-69	South Pass jetties, sand spit and mudlumps. Fresh water-marine water boundary in left foreground.
19	81	6-26-69	Detail of central mudlump shown on photo TL-37. Mudlumps No. 89-90 and South Pass sand spit and jetties in distance.
20	121	8-27-69	East Jetty South Pass, Mississippi Delta (foreground). Coast Guard Station and Bar Pilot Station on west bank. Mudlump islands in background.
21	122	8-27-69	Shoal area waves over South Pass sand spit which was breached by Hurricane Camille. South Pass mudlump islands in left middle ground.
22	123	8-27-69	South Pass mudlump islands. Waves breaking (left middle ground) show position of sand spit which was breached by Hurricane Camille.
23	Fig. 44, Bull. 35	Sept. 61	Aerial photograph of South Pass mudlumps.

			Left to right, Sp-4, Sp-1, Sp-2 and Sp-3.
24	82	6-26-69	Spit composed of organic matter (coffee grounds) extending westward from mudlumps 89-90 at mouth of South Pass into East Bay, Mississippi Delta.
25	77	6-26-69	Ground photo showing spit comprised of organic material (coffee grounds) extending East Bay from Mudlump 89-90 at mouth of South Pass, Mississippi Delta.
26	168	9-3-69	Ground photograph looking south of South Pass mudlump 89-90. Note wave cut bench and "ramassis" (plant debris) from Hurricane Camille.
27	Fig. 16, Bull. 35	Sept. 61	Raised terrace, left foreground, has resulted from secondary uplift of island SP-1. Tilting has caused the cliff to increase from 2 feet (foreground to about 5 feet (background). Two earlier terraces are shown at left.
28	Fig. 7, Mem. 8	1968	Coring operations on mudlump 89-90, South Pass.
29	977	8-63	View looking south of

			borehole casing in mudlump SP 89-90. Small mudlump island in background is mudlump 92, "the castle."
30	989	6-63	View looking south at mudlump 92, "the castle."
31	1006	1-69	View looking northeast of South Pass sand spit with mudlump No. 92 in foreground.
32	79	6-26-69	Detail of central mudlump shown on photo TL-27, mouth of South Pass, Mississippi Delta.
33	78	6-26-69	Three mudlumps breaking the water surface at mouth of South Pass, Mississippi Delta. Note: Mudlumps are shown on the seaward (right margin) side of photo TL-37.
34	80	6-26-69	Detail of rear (easternmost) mudlump shown on photo TL-27, South Pass, Mississippi Delta.
35	979	11-64	Ground view on south side of mudlump 94, South Pass.
36	981	11-64	Ground view of mudlump 94 with geologists collecting fossils.

37	967	11-64	Ground photograph looking toward the northwest of the west side of mudlump 93 at South Pass. Photograph taken at low tide.
38	Fig. 4, 1968 Mem. 8		South Pass mudlump islands mapped during period from 1876 to 1961.
39	Fig. 5, 1968 Mem. 8		Island and submarine mudlump distribution at South Pass. Data from 123 maps dated between 1876 and 1961.
40	Fig. 42, Sept. 61 Bull. 35		Advance of the bar at South Pass, 1920 to 1950.
41	Fig. 43, Sept. 61 Bull. 35		Map of the bar at South Pass. Submarine mudlumps indicated.
42	Fig. 10, 1968 Mem. 8		Sites of appearance of initial mudlumps and their progression, determined from maps dated between 1867 and 1961.
43	Fig. 40, Sept. 61 Bull. 35		Advance of the bar at Southwest Pass, 1920 to 1950.
44	Fig. 41, Sept. 61 Bull. 35		Map of the bar at Southwest Pass. Submarine mudlumps indicated.
45	Fig. 36, Sept. 61 Bull. 35		Schematic diagram showing relationship between bar growth and mudlump development.

46	Fig. 6, 1968 Mem. 8	Bore-hole locations and profile line along South Pass sand spit.
47A	Fig. 22, 1968 Mem. 8	Diagrammatic representation of South Pass mudlump origin and development, Stage A.
47B	Fig. 22, 1968 Mem. 8	Diagrammatic representation of South Pass mudlump origin and development, Stage B.
47C	Fig. 22, 1968 Mem. 8	Diagrammatic representation of South Pass mudlump origin and development, Stage C.
47D	Fig. 22, 1968 Mem. 8	Diagrammatic representation of South Pass mudlump origin and development, Stage D.
47E	Fig. 23, 1968 Mem. 8	Diagrammatic representation of South Pass mudlump origin and development, Stage E.
47F	Fig. 23, 1968 Mem. 8	Diagrammatic representation of South Pass mudlump origin and development, Stage F.
47G	Fig. 23, 1968 Mem. 8	Diagrammatic representation of South Pass mudlump origin and development, Stage G.

47H	Fig. 23, 1968 Mem. 8		Diagrammatic representation of South Pass mudlump origin and development, Stage H.
48	Fig. 9, 1968 Mem. 8		Shallow subsurface stratigraphy and structure of South Pass. Line of section is shown in Fig. 6.
49	Fig. 18, 1968 Mem. 8		Multiple reverse faulting found on wave-planed surface of South Pass mudlump 94.
50	Fig. 5, 1963 C.S.I No. 10		Comparison maps showing South Pass sand spit development and its relationship to mudlump islands.
51	LPI No. 968	Dec. 1969	View looking southwest of steamship aground in East Bay. Mudlump 89-90 in foreground and mudlump 93 in left rear of photograph.
52	LPI No. 965	Dec. 1969	Steamship aground in East Bay to the west of mudlump 93.

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PUBLICATIONS CITED

Morgan, James P., "Mudlumps at the Mouths of the Mississippi River," *in Genesis and Paleontology of the Mississippi River Mudlumps.* Louisiana Geological Survey, Bulletin No. 35 (1961), pp. 1-116.

Morgan, James P., Coleman, James M., and Gagliano, Sherwood M., *Mudlumps: Diapiric Structures in Mississippi Delta Sediments, in* DIAPIRISM AND DIAPIRS. American Association of Petroleum Geologists, Memoir No. 8 (1968), pp. 145-161.

Morgan, James P., Coleman, James M., and Gagliano, Sherwood M., *Mudlumps at the Mouth of South Pass, Mississippi River; Sedimentology, Paleontology, Structure, Origin, and Relation to Deltaic Processes.* LOUISIANA STATE UNIVERSITY STUDIES; COASTAL STUDIES SERIES, No. 10 (1963).

Exhibit 13	LPI 1224)
Exhibit 14	LPI 1228)
Exhibit 15	LPI 1227) Photos of birds and peli-
Exhibit 16	LPI 1226) cans by Dr. Morgan
Exhibit 17	LPI 1225)
Exhibit 18	LPI 1060, "Areas in Dispute in Louisiana Closing Line Contentions."
Exhibit 19	LPI 618, Mudlumps photo, M-101-6 dated June 26, 1969, Mouth of Southeast Pass, Mississippi Delta, with mudlump islands in foreground, view toward the northwest.
Exhibit 20	LPI 617, Photograph by Dr. James

P. Morgan concerning distribution of mudlumps at South Pass, M-101-5 dated June 26, 1969, South Pass mudlumps and sand spit, Mississippi Delta. Mudlump 93 on left of photo. Mudlump 89-90 in the central part of photo and new mudlumps offshore in right central part of photo.

Exhibit 21 LPI 362 through 430—Louisiana Original Brief Exhibit No. 21, 1 through 69 (includes Talcott's 1839 map).

Exhibit 22 LPI 1202—copy of notes by Dr. James P. Morgan and Mr. David Morgan which reflect the published nautical charts of the period of 1873 through 1969 for the Mississippi Delta Region and East Bay changes reflected thereby.

Exhibit 23 LPI 1054. Set of display materials pertaining to historic changes and semicircle data in East Bay. (1839-1956)

Exhibit 23-A LPI 1054 (same as above with the overlays)

Exhibit 24 A list of scientific publications by Dr. James P. Morgan.

Exhibit 25 Case of *The Anna*, 5 C. Rob. 373.

Exhibit 26 LPI 647—Bucket Bend Bay Exhibit.

Exhibit 26-A Corrected sheet to Ex. 26.

Exhibit 27 LPI 1053—Opinion of the Solicitor

Cox, dated December 20, 1963, approved by the then Attorney General, Robert Kennedy, addressed to the General, the Honorable Archibald Secretary of the Interior, at the request of the President concerning lands originally formed as islands in the marginal seas. Attached to the opinion is a letter dated December 20, 1963, by the Attorney General to the Secretary of the Interior expressing his accord.

Exhibit 28 Matters relating to Tern Islands and other Bird Reservations as follows:

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1. Executive Order of August 8, 1907	199 & 217
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3. Map of the State of Louisiana compiled from the official records of the General Land Office dated 1916 (See Exh. 258)	66
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31 F.R. 7686 dated May 24, 1968 — 205

8. 31 F.R. 16027 dated December 15, 1966 — 206

9. 31 F.R. 16027 dated December 15, 1966 — 207

10. *Alaska Pacific Fisheries v. United States*, 39 S.C. 40, 248 U.S. 78 (1918)

11. *United States of America v. State of Alaska, et al.* 423 F. 2d 764 (1970)

12. General correspondence regarding Tern Islands Reservation — 211 & 218

13. Bureau of Land Management Miscellaneous File No. 1883786 — 220

14. Fish and Wildlife Service Files LAEO—Louisiana, Tern Islands and Gas and Oil LA—Louisiana, Tern Islands — 219

15. First Formal Request for Admissions by State of Louisiana dated April 29, 1970, and Response to Louisiana's First Formal Request for Admissions by United States

16. State of Louisiana's Interrogatories dated February 3, 1970, and Response of United States thereto dated March 4, 1970

17. State of Louisiana's Interrogatories dated October 23, 1969, and Answers of United States with attachments thereto dated December 23, 1969

18. State of Louisiana's Request to the Bureau of Sports Fishery dated December 8, 1969, and Response of United States thereto dated January 20, 1970

19. Directory of National Wildlife Refuges — 209

20. Wildlife Sanctuaries in Louisiana from First Biennial Report of the Department of Wild Life and Fisheries Commission, 1944 and 1945 — 210

21. Memorandum dated September 25, 1952, addressed to the Bureau of Land Management suggesting revocation of Tern Islands Reservation — 201

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26. Executive Order of August 17, 1907, creating Shell Keys Reservation — 822

27. General correspondence regarding Shell Keys Reservation 824

28. Birds of the Delta National Wildlife Refuge 212

29. National Wildlife Refuges in Southeast Region 4 213

30. General correspondence regarding East Timbalier Island 823

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32. General correspondence regarding Breton National Wildlife Refuge 826

33. Inspection Report of East Timbalier Bird Reservation dated April 7, 1947, by John Lynch, Biologist 1162

34. Refer the Court to 18 U.S.C. 41

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Exhibit 29 LPI 215 - Map of the State of Louisiana compiled from the Official Records of General Land Office - 1930

Exhibit 30 LPI 1007 - Picture of bird display at Louisiana State University Museum

Exhibit 31 LPI 775)

Exhibit 32 LPI 776)

Exhibit 33 LPI 807)

Exhibit 34 LPI 812)

Exhibit 35 LPI 814) Photographs taken by Allan

Exhibit 36 LPI 816) Ensminger on flight over

Exhibit 37 LPI 800) Mississippi Delta area in January, 1970

Exhibit 38 LPI 805)

Exhibit 39 LPI 815)

Exhibit 40 LPI 798)

Exhibit 41 LPI 1192 - View of fresh dredge spoil jetties (Photograph by Mr. Allan Ensminger)

Exhibit 42 LPI 787 - Photograph taken by Mr. Allan Ensminger on flight over Mississippi Delta area January, 1970

Exhibit 43 LPI 783 - Photograph taken by Mr. Allan Ensminger on flight over Mississippi Delta area, January, 1970

Exhibit 44 LPI 1191 - View of portion of spit above water at mouth of Pass Tante Phine (Photograph by Mr. Allan Ensminger)

Exhibit 45 LPI 1187 - View of portion of spit at Pass Tante Phine above water (Photograph by Mr. Allan Ensminger)

Exhibit 46 LPI 1188 - View of islands breaking up north of West Bay (Photograph by Mr. Allan Ensminger)

Exhibit 47 LPI 1189 - View of island headland at north side of West Bay (Photograph by Mr. Allan Ensminger)

Exhibit 48 LPI 780 - Photograph taken by Mr. Allan Ensminger on flight over Mississippi Delta area in January, 1970

Exhibit 49 Index to Mr. Allan Ensminger's photographs

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3. Refer the Court to Act of February 19, 1895, and amendments (28 Stat 672 32 Stat 829 37 Stat 736 60 Stat 1097 33 USC 151)	
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13. Refer the Court to the prohibition case of *Cook v. United States*, 53 S.Ct. 305

14. State of Louisiana's Second Formal Requests for Admissions (with attachments) and Response of United States

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of October 23, 1969, and Response of United States

16. United States' Interrogatories of January 20, 1970, and Response of State of Louisiana

17. Refer the Court to 33 CFR Subpart 37.50 and 33 CFR subpart 3.40 - 10 regarding New Orleans Marine Inspection Zone

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Exhibit 54 Permits Issued by United States Army Corps of Engineers for Dredging Canals and Other Operations in East Bay, as follows:

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241.	United States Fish & Wildlife Service Tabulation of Commercial Landings of Fish and Shellfish at ports in Plaquemines Parish, dated September 9, 1968	270
242.	Tabulations of Hunting Licenses Sold by Parishes	827
243.	Herbert R. Padgett, "Some Physical and Biological Relationships to the Fisheries of the Louisiana Coast," in *The Professional Geographer* (September, 1966), pp. 423-439	271
244.	Act 210 of 1946	272
245.	Louisiana Revised Statutes R.S. 56:551 through 561	273
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Exhibit 56 State Control Over Seismic Operations, as follows:

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7.	Seismic Permit No. 2213 dated January 30, 1950	1072
8.	Seismic Permit No. 2214 dated January 30, 1950	1073

9.	Seismic Permit No. 1229 dated June 19, 1947	1074
10.	Seismic Permit No. 1051 dated December 23, 1946	1075
11.	Seismic Permit No. 2231 dated April 4, 1950	1076
12.	Seismic Permit No. 2389 dated June 19, 1950	1077
13.	Seismic Permit No. 17 dated January 30, 1941	1078
14.	Seismic Permit No. 2363 dated July 17, 1950	1079
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17.	Seismic Permit No. 1160 dated April 29, 1947	1082
18.	Seismic Permit No. 1055 dated January 7, 1947	1083
19.	Seismic Permit No. 1077 dated February 3, 1947	1084
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26. Seismic Permit No. 1363 dated November 13, 1947 1091
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28. Seismic Permit No. 1452 dated January 13, 1948 1093
29. Seismic Permit No. 1515 dated February 27, 1948 1094
30. Seismic Permit No. 1778 dated November 8, 1948 1095
31. Seismic Permit No. 1558 dated April 6, 1948 1096
32. Seismic Permit No. 1808 dated December 22, 1948 1097
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35. Seismic Permit No. 1557 dated April 6, 1948 1100
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45. Seismic Permit No. 2512-R, approved April 13, 1949, to Shell Oil Company, Inc. 921
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54. Seismic Permit No. 3051, approved August 5, 1945, to Shell Oil Company, Inc. 930

55. Seismic Permit No. 2430, approved February 2, 1948, to General Geophysical Company 931

56. Seismic Permit No. 3046, approved August 3, 1949, to Shell Oil Company, Inc. 932

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3. *The History and Regulation of the Shell Dredging Industry in Louisiana*, Compiled by the Louisiana Wild Life and Fisheries Commission (1968). 71

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56. State Mineral Lease No. 188, 1928 1204
57. State Mineral Lease No. 192, 1928 1205
58. State Mineral Lease No. 195, 1928 1206
59. Refer the Court to a map which reflects information concerning areas affected by mineral leases granted by the State of Louisiana as reflected by the records of the Louisiana State Mineral Board since the period of the creation of that Board. It pertains to East Bay. 1064
60. Refer the Court to an exhibit which reflects the same sort of information as does the exhibit bearing La. Preliminary Identifying Number

1064, except that it pertains to the Caillou Bay Area. 1065

61. Map showing lease block locations in South Pass Area 898

62. U. S. Department of the Interior, Geological Survey, Number, 1950, Mid Continent Map No. 1603 899

63. Pertinent parts of Outer Continental Lease Maps of Louisiana, published by U. S. Department of the Interior, Bureau of Land Management 1150

64. A map published by the Department of Conservation of the State of Louisiana entitled, Oil and Gas Map of Louisiana 1151

65. Map showing lease block locations in Ship Shoal Area 900

66. U. S. Department of the Interior Geological Survey; October, 1950, Mid Continent Map No. 1607, Ship Shoal Area 901

67. Refer the Court to Louisiana Brief Exhibit Number 38 399

68. Refer the Court to Louisiana Brief Exhibit Number 39 400

69. List of well permits prior to 1956 279

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Exhibit 59 Pollution Control, as follows:

POLLUTION CONTROL

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5.	Rules Governing Disposal of Waste Oil, Oil Field Brine, etc.	288
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Exhibit 60	Vita of Dr. Leo J. Bouchez	
Exhibit 61-A	First drawing or sketch by Dr. Leo J. Bouchez.	
Exhibit 61-B	Second drawing or sketch by Dr. Leo J. Bouchez.	
Exhibit 62	Written opinion of Dr. Leo J. Bouchez, "The Changing Configuration of the Coast and the Law."	
Exhibit 63	L. J. Bouchez, *The Regime of Bays in International Law*, A. W. Sythoff-Leyden (1964).	
Exhibit 64	LPI 827-A—Data sheet compiled from Gulf Coast Shrimp Data of the U. S. Department of the Interior, on shrimp boat trips	
Exhibit 65	Vita of J. Y. Christmas	

Exhibit 66 LPI—Yu. A. Torin, "Oceanographic Conditions and Fishing in the Gulf of Mexico During Autumn and Winter," (Okeonologicheskie usloviya i promysel ryby v. Meksikanskom zalive v. oseene-zimii period), *in Trudy Atlanticheskogo Nauchno-Issledovatel' skogo Instituta Rybnogo Khozyaistva i Okeanografil Atlan-NIRO*), No. 11, p. 4-11 (1964)

Exhibit 67 LPI 841—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of leases 48; 4,168; 249; 3400; 3257; 3401; 301; 315; 313; 317; 3420; 303; 335; 640; 3403; 3408; 3406; 3422; 3398.

Exhibit 68 LPI 46—Copy of certified copy of oyster lease map of South Pass and East Bay

Exhibit 69 LPI 846—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of leases 52; 49; 43; 50; 2787

Exhibit 70 LPI 842—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of leases 349; 353; 386; 342; 334; 351; 348; 350; 346; 383; 384; 387; 382; 385; 388; 352; 341; 343; 347

Exhibit 71 LPI 839—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of leases 5013 and 4482.

Exhibit 72 LPI 843—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of leases 311; 314; 320

Exhibit 73 LPI 845—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of leases 321; 56; 321; 302; 296; 310

Exhibit 74 LPI 844—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of leases 7053; 7039; 6032; 9337; 8252; 4061; 8251; 8690; 9338

Exhibit 75 LPI 847—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of leases 7164; 4042

Exhibit 76 LPI 848—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of leases 7641; 7175; 11,896; 7095; 7039; 7053

Exhibit 77 LPI 838—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of lease 18,330

Exhibit 78 LPI 840—Part of map from records of Louisiana Wild Life and Fisheries Commission showing location of leases 11,639; 11,638; 11,640; 11,-641; 11,637; 11,642; 14,461; 14,240

Exhibit 79 Louisiana Oyster Lease No. 334

Exhibit 80 Louisiana Oyster Lease No. 18330

Exhibit 81 Louisiana Oyster Lease No. 301

Exhibit 82 Louisiana Oyster Lease No. 654

Exhibit 83 Louisiana Oyster Lease No. 5013

Exhibit 84 Louisiana Oyster Lease No. 4482

Exhibit 85 Louisiana Oyster Lease No. 3257

Exhibit 86 LPI 1222—Certified copies of parts of the file of State Mineral Lease 579

Exhibit 87 LPI 1223—Certified copies of parts of the file of State Mineral Lease 580

Exhibit 88 LPI 1221—Certified copies of parts of the file from State Mineral Lease 335

Exhibit 89 LPI 1220—Certified copies of documents comprising parts or portions of the file, State Mineral Lease 195

Exhibit 90 LPI 1219—Certified copies of documents comprising parts of the file, State Land Lease 192

Exhibit 91 LPI 1218—Certified copies of documents comprising parts or portions of the file of the State Mineral Lease 188

Exhibit 92 LPI 1217—Certified copies of excerpts from index book at the State Land Office of Louisiana pertaining to State Mineral Lease Nos. 188, 192, 195, 335, 579 and 580

Exhibit 93 LPI 1170 through 1176 as follows:
LPI 1170—Plat of T. 22 and 23 S., R. 32 E., Louisiana Meridian, approved Sept. 25, 1875
LPI 1171—Plat of T. 22 S., R. 32 E. Louisiana Meridian, approved December 8, 1842
LPI 1172—Plat of T. 21 and 22 S., R. 19 E. St. Helena meridian, approved July 16, 1832
LPI 1173—Plat of T. 24 S., R. 32 and 33 E. Louisiana meridian, approved Sept. 25, 1875
LPI 1174—Plat of T. 22 S., R. 31 E., Louisiana meridian, approved December 8, 1842
LPI 1175—Plat of T. 24 S., R. 30 and 31 E., Louisiana meridian, approved May 18, 1842
LPI 1176—Plat of T. 23 S., R. 31 and 32 E. Louisiana meridian, approved Dec. 8, 1842

Exhibit 94 LPI 1184—Copy of quadrangle map entitled "South Pass Quadrangle"

Exhibit 95 LPI 1064—This is a map which reflects information concerning areas affected by mineral leases granted by the State of Louisiana as reflected by the records of the Louisiana State Mineral Board since the period of the creation of that Board. It pertains to East Bay.

Exhibit 96 LPI 1065—This exhibit reflects the same sort of information as does the

exhibit bearing Louisiana Preliminary Identifying Number 1064, except that it pertains to the Caillou Bay area

Exhibit 97 LPI 1025—Map showing outer limit of areas claimed as the minimum extent of inland waters Louisiana would be entitled to under issues 1A through E

Exhibit 98 LPI 1027—Maps and other materials showing location of Inland Water Lines designated and defined under the Act of February 19, 1895

Exhibit 99 LPI 53—Copy of Chart No. 194, Edition 8, date, September, 1901.

Exhibit 100 LPI 899—U. S. Department of the Interior, Geological Survey, November, 1950, Mid Continent Map No. 1603

Exhibit 101 LPI 901—U. S. Department of the Interior, Geological Survey; October, 1950, Mid Continent Map No. 1607, Ship Shoal Area

Exhibit 102 LPI 900—Map showing lease block locations in Ship Shoal Area

Exhibit 103 LPI 898—Map showing lease block locations in South Pass area

Exhibit 104 LPI 1059—This exhibit contains a collection of cartographic materials relating to the Ascension-Barataria Bay area 7 and 10 of the statement of issues. It shows possible overlarge

closing lines and related contentions of Louisiana, plus alternative contentions of Louisiana within this area; and related data

Exhibit 105 Page 2 of Biennial Report of State Mineral Board dated June, 1950

Exhibit 106 LPI 336—Report of John Jay to the President of Congress from Madrid, May 26, 1780, letter dated May 11, 1780, pp. 722-725

Exhibit 107 LPI 337—Communications of the Honorable the French Minister to a Committee of Congress at a Second Conference, February 2, 1780, pp. 488-490

Exhibit 108 LPI 335—Proceedings of Congress as to conditions of pacification and particularly as to the Mississippi and Fisheries, February 23, 1779, pp. 58-61

Exhibit 109 LPI 338—Congress—Proceedings as to the Conditions of Pacification and particularly as to the Mississippi and the Fisheries, September 17, 1779, pp. 324-326

Exhibit 110 LPI 340—Vol. IV, John Jay to the President of Congress, November 6, 1780, excerpt pp. 134-138

Exhibit 111 LPI 339—Vol. IV, Letter of Benjamin Franklin to John Jay, October 2, 1780, pp. 74-76

Exhibit 112 LPI 341—Vol. IV, John Jay to the

President of Congress, October 3, 1781, excerpt pp. 742-745

Exhibit 113 LPI 348—*The Debates and Proceedings of the Congress of the United States* with an appendix containing important state papers and public documents and all the laws of a public nature. 7th Congress, 2nd Session from December 6, 1802, to March 3, 1803, Vol. 12, Washington: Gale & Seaton, 1851. Mr. Madison to Charles Pinckney, November 27, 1802, pp. 1058-1059

Exhibit 114 LPI 351—*The Debates and Proceedings of the Congress of the United States* with an appendix containing important state papers and public documents and all the laws of a public nature. 7th Congress, 2nd Session from December 6, 1802, to March 3, 1803, Vol. 12, Washington: Gale & Seaton, 1851. The Purchase of Louisiana, January 1803, pp. 370-374

Exhibit 115 LPI 345—*American State Papers, Documents, Legislative and Executive, of the Congress of the United States*, from the 1st Session of the 1st to the 3rd Session of the 13th Congress, inclusive: commencing March 3, 1789 and ending March 3, 1815. Walter Lowrie, & Matthew St. Clair Clarke, eds., Foreign Relations, Vol. II, Washington: Published by Gale & Seaton, 1832, No. 18 France

and Spain—Louisiana 7th Congress, 2nd Session Robert R. Livingston to the Secretary of State No. 3, January 7, 1802, pp. 536-537. Footnote in book: "The date should, no doubt, be 1803."

Exhibit 116 LPI 355—H. A. Washington, *The Writings of Thomas Jefferson, Volume IV*, Taylor & Maury, (1854) pp. 456-460. Letter to M. Dupont, February 1, 1803.

Exhibit 117 LPI 354—Treaty for the Cession of Louisiana, April 30, 1803, 8 Stat. 200-7.

Exhibit 118 LPI 352—*The Debates and Proceedings of the Congress of the United States*, Eleventh Congress, Third Session, December 3, 1810 to March 3, 1811, Washington: Gales & Seaton, 1853. "An act to enable the people of the Territory of Orleans to form a constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original states and for other purposes," pp. 1326-8

Exhibit 119 LPI 353—*The Debates and Proceedings of the Congress of the United States*, Twelfth Congress, First Session, November 4, 1811 to July 6, 1812, Washington: Gales & Seaton, 1853. "An act for the admission of the State of Louisiana into the Union

and to extend the laws of the U. S. to the said State," pp. 2264-2266

Exhibit 120 Map 4 of 8 of the Set of 54 maps

Exhibit 120-A Map 5 of 8 of the Set of 54 maps

Exhibit 120-B Map 6 of 8 of the Set of 54 maps

Exhibit 121 Photograph album of Curtis L. Buttorff, containing the following series of photographs:

Description of Louisiana Exhibit 121—Series of Photographs

1. 902-22; LPI 992; Corps of Engineers; 3 October 1929
   902-68; LPI 994; Corps of Engineers; 3 October 1929
2. INO-1-157; Corps of Engineers; 14 October 1940
3. 20V311RWM1063; United States Exhibit; 1 October 1946
4. M-17-88-3; Corps of Engineers; 5 June 1949
5. 724-193; United States Exhibit; 1 July 1954
6. 24-116; LPI 537; Corps of Engineers; 29 February 1956
7. L596; C. & G. S.; 23 October 1956
8. L6948; C. & G. S.; 11 October 1958
9. 144; LPI 544; Corps of Engineers; 8 November 1959
10. L8728; C. & G. S.; 30 November 1959
11. L9121; C. & G. S.; 7 December 1959
12. 0932; C. & G.S.; 23 October 1956

13. 61; LPI 546; Corps of Engineers; 13 October 1960
    62; LPI 547; Corps of Engineers; 13 October 1960
14. 112; LPI 550; Corps of Engineers; 17 October 1961
15. 75; Corps of Engineers; 23 November 1962
16. 5-1032; Corps of Engineers; 18 September 1965
17. S8995; C. & G.S.; 8 October 1965
18. 6-12; Source unknown; 23 February 1967
19. 59-61; LPI 562; Corps of Engineers; 15 November 1969
20. E4977; C. & G. S.; 30 January 1970
21. 4873; C. & G.S.; 24 January 1970
22. 8181R; C. & G. S.; 24 January 1970
23. 8281R; C. & G. S.; 30 January 1970

Exhibit 121-A Dr. James P. Morgan overlay of Figure 2 from Exhibit 6

Exhibit 121-B Photos—Stereo Partners, as follows:

Louisiana Exhibit 121B—Series of Photographs

1. INO-1-158; Corps of Engineers
2. 24 January 1970; L8182R; C. & G. S.
3. 30 January 1970; E4976; C. & G. S.
4. 30 November 1959; L8727; C. & G. S.
5. 7-59-145; Corps of Engineers; LPI 545
6. 30 January 1970; L8280R; C. & G. S.
7. 15 November 1969; 59-64; Corps of Engineers; LPI 564

8. 6-61-113; Corps of Engineers; LPI 551
9. 23 October 1956; L595; C. & G. S.
10. 9-60-61; Corps of Engineers; LPI 546
11. 1 October 1946; 21V311RWM1063 16PS 6P183
12. 18 September 1965; 5-1031; Corps of Engineers
13. 12-62-74; Corps of Engineers
14. 29 February 1956; 24-115 P-55; Corps of Engineers; LPI 536
15. 1-7-54; 724-192; Corps of Engineers
16. 8 October 1965; S8996; C. & G. S.
17. 1-7-54; 724-192; Corps of Engineers

Exhibit 122 1895 Chart No. 194

Exhibit 123 LPI-1144, Depositions of Dr. A. Joseph Wraight and Mr. James F. Richardson

E X H I B I T S

W-1 October 3, 1969, letter to Mr. Frederick W. Ellis from Wraight
RW-2 May 26, 1969, Chart No. 1272 (with markings)
R-1 October 29, 1935, Chart No. 1272, see Exh. 164
R R-2 H-6172
R R-3 H-6513
R R-4 H-6492 (copy of portion)
R R-5 H-6492 (film 1:30,000)
R R-6 T-5407
R R-7 May 26, 1969, Chart No. 1272 (clean)

Exhibit 124 December 6, 1969, edition of Chart No. 1272

Exhibit 125 LPI 1010—Copy of letter and report from Mr. Leo W. Hough, State of Louisiana, Department of Conservation, Louisiana Geological Survey, dated July 31, 1970

Exhibit 126 Drilling Activity in East Bay and Caillou Bay before Interim Agreement of October 12, 1956

Exhibit 127-A C. & G. S. Photo No. L-9090, 7 December 1959

Exhibit 127-B C. & G. S. Photo No. L-9091, 7 December 1959

Exhibit 127-C C. & G. S. Photo No. L-9092, 7 December 1959

Exhibit 128-A C. & G. S. Photo No. L-8987, 3 December 1959

Exhibit 128-B C. & G. S. Photo No. L-8988, 3 December 1959

Exhibit 129-A C. & G. S. Photo No. L-9031, 3 December 1959

Exhibit 129-B C. & G. S. Photo No. L-9032, 3 December 1959

Exhibit 129-C C. & G. S. Photo No. L-9033, 3 December 1959

Exhibit 129-D C. & G. S. Photo No. L-9034, 3 December 1959

Exhibit 130 Affidavit by Mr. Frank J. Williams

identifying Sheet 38 of Louisiana Exhibit 21

Exhibit 131 Overlay of right inset on Chart No. 1272 introduced as Exhibit 8

Exhibit 132 Illustrative sketch of seasonal mud-lump growth process

Exhibit 133 LPI 1057—Alternative methods of planimetering area of an indentation are graphically illustrated on this exhibit

Exhibit 134 LPI 1198—Photo Mosaic—Copies of documents in connection with our answers and objections to the First Formal Interrogatories of the United States and the related Requests for Admissions in globo

Exhibit 134-A Mosaic 21

Exhibit 134-B Mosaic 22

Exhibit 134-C Mosaic 23

Exhibit 134-D Mosaic 24

Exhibit 134-E Mosaic 25

Exhibit 134-F Mosaic 26

Exhibit 135 LPI 360—Samuel H. Lockett, *Louisiana As It Is*. Baton Rouge: Louisiana State University Press (1969). The original manuscripts of this geological survey were written in 1876 and 1891.

Exhibit 136 LPI 1011 - Copy of picture of Southwest Pass on wall at Lou-

isiana State University School of Geoscience

Exhibit 137 LPI 55 - Copy of a letter from the Liddell (Moses St. John R. and Family) Papers in the Department of Archives and Manuscripts of Louisiana State University

Exhibit 138 LPI 56 - Copy of page from the "Daily Picayune" of Thursday morning, August 14, 1856, obtained from Library of Louisiana State University

Exhibit 139 LPI 57 - Copy of page from the "Daily Picayune" of Friday morning, August 15, 1856, obtained from Library of Louisiana State University

Exhibit 140 LPI 58 - Copy of page from the "Daily Picayune" of Saturday morning, August 16, 1856, obtained from Library of Louisiana State University

Exhibit 141 LPI 59 - Copy of page from the "Daily Picayune" of Saturday morning, August 16, 1856, obtained from Library of Louisiana State University

Exhibit 142 LPI 60 - Copy of page from the "Daily Picayune" of Monday afternoon, August 18, 1856, obtained from Library of Louisiana State University

Exhibit 143	LPI 61 - Copy of page from the "Daily Picayune" of Wednesday morning, August 20, 1856, obtained from Library of Louisiana State University
Exhibit 144	LPI 62 - Copy of page from the "Daily Picayune" of Wednesday morning, August 20, 1856, obtained from Library of Louisiana State University
Exhibit 145	LPI 1146 - Deposition of Mr. Samuel J. Nunez
Exhibit 146	LPI 1148 - Deposition of Mr. Chin D. Hoy
Exhibit 147	LPI 1149 - Deposition of Mr. Abraham Schouest
Exhibit 148	LPI 1144 - Deposition of Mr. Samuel Von Lubbe
Exhibit 149	LPI 1147 - Deposition of Mr. Landry Cheramie
Exhibit 150	All of Louisiana's Requests for Admissions and Interrogatories and Answers thereto directed to the United States.
Exhibit 151	LPI 903 - Pertinent parts of 1887 map of the Alluvial Valley of the Mississippi River
Exhibit 152	LPI 358 - *Sovereignty of the Sea*, U. S. Department of State, Geographic Bulletin No. 3 (April, 1965)

Exhibit 153	LPI 359 - *Sovereignty of the Sea*, U. S. Department of State, Geographic Bulletin No. 3, rev. (October, 1969)
Exhibit 154	LPI 1132 - Whiteman, *Digest of International Law*, Vol. 4, U. S. Dept. State No. 7825 (April, 1965)
Exhibit 155	LPI 1142 - U. S. Coast & Geodetic Survey Chart No. 1
Exhibit 156	LPI 1137 - Willard Bascom, WAVES AND BEACHES: THE DYNAMICS OF THE OCEAN SURFACE, Doubleday & Co., Inc. (1964)
Exhibit 157	LPI 897 - Map of Survey of the United States Coast, Section VIII, made in 1853 by F. H. Gerdes
Exhibit 158	LPI 1 - Nautical Chart No. 94, 3rd Edition, Published June, 1877, by U.S.C.&G.S.
Exhibit 159	LPI 2 - Nautical Chart No. 194, 13th Edition, Published December 20, 1918, by U.S.C.&G.S.
Exhibit 160	LPI 3 - Nautical Chart No. 194, 15th Edition, Published November 19, 1924, by U.S.C.&G.S.
Exhibit 161	LPI 4 - Nautical Chart No. 1272, 1st Edition, Published February 12, 1925, by U.S.C.&G.S.
Exhibit 162	LPI 5 - Nautical Chart No. 1272, 3rd Edition, Published January 11, 1933, by U.S.C.&G.S.

Exhibit 163 LPI 6 - Nautical Chart No. 1272, 5th Edition, Published September 28, 1934, by U.S.C.&G.S.

Exhibit 164 LPI 7 - Nautical Chart No. 1272, 6th Edition, Published October 29, 1935, by U.S.C.&G.S.

Exhibit 165 LPI 8 - Nautical Chart No. 1272, 7th Edition, Published April 1, 1944, by U.S.C.&G.S.

Exhibit 166 LPI 9 - Nautical Chart No. 1272, 9th Edition, Published March 31, 1947, by U.S.C.&G.S.

Exhibit 167 LPI 10 - Nautical Chart No. 1272, 9th Edition, Published August 22, 1955, by U.S.C.&G.S.

Exhibit 168 LPI 11 - Nautical Chart No. 1272, 9th Edition, Published September 17, 1956, by U.S.C.&G.S.

Exhibit 169 LPI 52 - Copy of Chart No. 94, Edition 1, date, 1873

Exhibit 170 LPI 54 - Copy of Chart No. 194, Edition 10, dated July, 1910

Exhibit 171 LPI 291 - Photostatic copy of Connelly Field Notes

Exhibit 172 LPI 292 - Letter from Mr. Seymour Lowman, Assistant Secretary of the Treasury to the Secretary of State, dated June 4, 1929

Exhibit 173 LPI 1214 - Edward W. Orton, "A Geological Study of Marsh Island, Iberia Parish, Louisiana," Technical Report of Louisiana Wild Life and Fisheries Commission (1959)

Exhibit 173-A Attachments to Exhibit 173 - LPI 1214

Exhibit 174 LPI 293 - 1940, Chart No. 2, p. 1 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 294 - 1941, Chart No. 2, p. 1 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 295 - 1942, Chart No. 2, p. 1 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 296 - 1943, Chart No. 2, p. 1 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 297 - 1944-1945, Chart No. 2, p. 3 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 298 - 1946, Chart No. 2, p. 3 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 299 - 1947, Chart No. 2, p. 3 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 300 - 1948, Chart No. 2, p. 3 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 301 - 1949, Chart No. 2, p. 3 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 302 - 1950, Chart No. 2, p. 5 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 303 - 1951, Chart No. 2, p. 5 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 304 - 1952, Chart No. 4, p. 7 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 305 - 1953, Chart No. 4, p. 10 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 306 - 1954, Chart No. 4, p. 10 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 307 - 1955, Chart No. 4, p. 9 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 308 - 1956, Chart No. 190, p. 158 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 309 - 1957, Chart No. 195, p. 158 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 310 - 1958, Chart No. 200, p. 160 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 311 - 1959, Chart No. 206, p. 160 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 312 - 1960, Chart No. 206, p. 160 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 313 - 1961, Chart No. 212, p. 161 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 314 - 1962, Chart No. 220, p. 170 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 315 - 1963, Chart No. 226, p. 173 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 316 - 1964, Chart No. 228, p. 169 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 317 - 1965, Chart No. 232, p. 168 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 318 - 1966, Chart No. 242, p. 171 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 319 - 1967, Chart No. 252, p. 174 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 320 - 1968, Chart No. 245, p. 167 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 321 - 1969, Chart No. 243, p. 163 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

Exhibit 175

LPI 322 - 1956, Chart No. 192, p. 159 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 323 - 1957, Chart No. 197, p. 159 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 324 - 1958, Chart No. 202, p. 161 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 325 - 1959, Chart No. 207, p. 161 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 326 - 1960, Chart No. 208, p. 161 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 327 - 1961, Chart No. 214, p. 162 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 328 - 1962, Chart No. 222, p. 171 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 329 - 1963, Chart No. 228, p. 174 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 330 - 1964, Chart No. 230, p. 170 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

LPI 331 - 1965, Chart No. 234, p. 169 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*

	LPI 332 - 1966, Chart No. 244, p. 172 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*
	LPI 333 - 1967, Chart No. 254, p. 175 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*
	LPI 334 - 1968, Chart No. 248, p. 169 from charts of the U. S. Bureau of the Census, *Statistical Abstract of the United States*
Exhibit 176	LPI 1212 - G. Etzel Pearcy, "Measurement of the United States Territorial Sea," *Department of State Bulletin*, No. 1044 (June 29, 1959)
Exhibit 177	LPI 1131 - E. L. Corthell, *A History of the Jetties at the Mouths of the Mississippi River*, New York: John Wiley and Sons, 2d ed. (1881).
Exhibit 178 (Accession file)	LPI 918 - File from records of United States Coast & Geodetic Survey treated in 1 Shalowitz *Shore & Sea Boundaries*
Exhibit 178-A	Copies of correspondence re Acc. File
Exhibit 179	Pages 503 through 507 of Humphrey and Abbot, Appendix A
Exhibit 180	LPI 1055 - This exhibit also pertains to East Bay and contains data and measurement information

	associated with various maps of the period 1918 through the 1960's. The various components of the exhibit also reflect alternative natural entrance points and measurement data related to certain land forms not treated in the exhibit identified by Louisiana Preliminary Identifying No. 1054
Exhibit 181-A	Chart 1272, 21st Edition
Exhibit 181-B	Chart 1273, 9th Edition
Exhibit 181-C	Chart 1274, 10th Edition
Exhibit 181-D	Chart 1275, 1970 Edition
Exhibit 182-A	LPI 73 - Color Photograph - Photo No. TL-13 dated June 26, 1969
Exhibit 182-B	LPI 74 - Color Photograph - Photo No. TL-14 dated June 26, 1969
Exhibit 182-C	LPI 83 - Color Photograph - Photo No. T-36 dated June 26, 1969
Exhibit 182-D	LPI 86 - Color Photograph - Photo No. TL-39 dated June 26, 1969
Exhibit 182-E	LPI 94 - Color Photograph - Photo No. TL-51 dated June 26, 1969
Exhibit 182-F	LPI 101 - Color Photograph - Photo No. TL-65 dated August 27, 1969
Exhibit 182-G	LPI 103 - Color Photograph - Photo No. TL-83 dated August 27, 1969
Exhibit 182-H	LPI 106 - Color Photograph - Photo No. TL-97 dated August 27, 1969

Exhibit 182-I	LPI 107 - Color Photograph - Photo No. TL-99 dated August 27, 1969
Exhibit 182-J	LPI 108 - Color Photograph - Photo No. TL-100 dated August 27, 1969
Exhibit 182-K	LPI 109 - Color Photograph - Photo No. TL-101 dated August 27, 1969
Exhibit 182-L	LPI 110 - Color Photograph - Photo No. TL-102 dated August 27, 1969
Exhibit 182-M	LPI 111 - Color Photograph - Photo No. TL-113 dated August 27, 1969
Exhibit 182-N	LPI 114 - Color Photograph - Photo No. TL-116 dated August 27, 1969
Exhibit 182-O	LPI 115 - Color Photograph - Photo No. TL-117 dated August 27, 1969
Exhibit 182-P	LPI 126 - Color Photograph - Photo No. TL-136 dated August 27, 1969
Exhibit 182-Q	LPI 130 - Color Photograph - Photo No. TL-142 dated August 27, 1969
Exhibit 182-R	LPI 138 - Color Photograph - Photo No. TL-193 dated September 3, 1969
Exhibit 182-S	LPI 139 - Color Photograph - Photo No. TL-196 dated September 3, 1969
Exhibit 182-T	LPI 141 - Color Photograph - Photo No. TL-202 dated September 3, 1969
Exhibit 182-U	LPI 142 - Color Photograph - Photo No. TL-204 dated September 3, 1969

Exhibit 182-V	LPI 153 - Color Photograph - Photo No. TL-217 dated September 3, 1969
Exhibit 182-W	LPI 155 - Color Photograph - Photo No. TL-219 dated September 3, 1969
Exhibit 182-X	LPI 156 - Color Photograph - Photo No. TL-220 dated September 3, 1969
Exhibit 182-Y	LPI 157 - Color Photograph - Photo No. TL-213 dated September 3, 1969
Exhibit 182-Z	LPI 159 - Color Photograph - Photo No. TL-225 dated September 3, 1969
Exhibit 182-AA	LPI 161 - Color Photograph - Photo No. TL-227 dated September 3, 1969
Exhibit 182-AB	LPI 162 - Color Photograph - Photo No. TL-228 dated September 3, 1969
Exhibit 182-AC	LPI 164 - Color Photograph - Photo No. TL-230 dated September 3, 1969
Exhibit 182-AD	LPI 165 - Color Photograph - Photo No. TL-231 dated September 3, 1969
Exhibit 182-AE	LPI 166 - Color Photograph - Photo No. TL-232 dated September 3, 1969
Exhibit 182-AF	LPI 169 - Color Photograph - Photo

	No. TL-241 dated September 3, 1969
Exhibit 182-AG	LPI 171 - Color Photograph - Photo No. TL-244 dated September 3, 1969
Exhibit 182-AH	LPI 172 - Color Photograph - Photo No. TL-245 dated September 3, 1970
Exhibit 182-AI	LPI 173 - Color Photograph - Photo No. TL-246 dated September 3, 1969
Exhibit 182-AJ	LPI 174 - Color Photograph - Photo No. TL-247 dated September 3, 1969
Exhibit 182-AK	LPI 179 - Color Photograph - Photo No. TL-264 dated October 2, 1969
Exhibit 182-AL	LPI 181 - Color Photograph - Photo No. TL-266 dated October 2, 1969
Exhibit 182-AM	LPI 609 - Photograph - TL-O(32) 2 dated June 24, 1967, Jetties at mouth of Belle Pass outlet of Bayou LaFourche
Exhibit 182-AN	LPI 610 - Photograph - TL-O(34) 1 dated June 24, 1967, Ground view showing exhumed marsh in retreating beach area, Timbalier Island, Louisiana
Exhibit 182-AO	LPI 953 - Photograph by Dr. James P. Morgan of different parts of the Louisiana coastal area

Exhibit 182-AP	LPI 1005 - Photograph from the files of Dr. James P. Morgan
Exhibit 183	**NOTE: EXHIBIT 183-A THROUGH 183-V WERE WITHDRAWN. THEY APPEAR IN LOUISIANA EXHIBIT 21.**
Exhibit 183-W	LPI 959 - Photograph TL-284 dated October 2, 1969. Different parts of the Louisiana coastal area
Exhibit 183-X	LPI 973 - Photograph TL-299 dated October 2, 1969. Different parts of the Louisiana coastal area
Exhibit 183-Y	LPI 988 - Photograph TL-283 dated October 2, 1969. Different parts of the Louisiana coastal area
Exhibit 183-Z	LPI 991 - Photograph TL-287 dated October 2, 1969. Different parts of the Louisiana coastal area
Exhibit 184-A	LPI 611 - Photograph M-100-8 dated June 26, 1969, View Southwest showing mouth of Pass Tante Phine
Exhibit 184-B	LPI 612 - Photograph M-100-10 dated June 26, 1969, View west showing peninsula extending south toward mouth of Pass Du Bois
Exhibit 184-C	LPI 613 - Photograph M-100-12 dated June 26, 1969, View toward the Northwest showing the west end of Pass Du Bois and the peninsula to the north

Exhibit 184-D LPI 614 - Photograph M-100-13 dated June 26, 1969, View looking southwest along the sand spit on the east side of Southwest Pass, Mississippi Delta

Exhibit 184-E LPI 615 - Photograph M-100-15 dated June 26, 1969, Mouth of South Pass, Mississippi Delta. Sand spit, mudlump islands No. 89-90 and new smaller lumps shown in the foreground View toward the north

Exhibit 184-F LPI 616 - Photograph M-101-4 dated June 26, 1969, South Pass mudlumps and sand spit, Mississippi Delta. Mudlump 93 on left of photo. Mudlump 89-90 in the central part of photo and new mudlumps offshore in right central part of photo. The distinct fresh water-salt water boundary line shown in the foreground

Exhibit 184-G LPI 619 - Photograph M-101-7 dated June 26, 1969, Mouth of Southeast Pass, Mississippi Delta, and mudlump islands in right middle ground. View toward the north.

Exhibit 184-H LPI 620 - Photograph M-101-8 dated June 26, 1969, Balize Peninsula in the background and Balize Bayou mudlumps in the foreground. View looking generally north.

Exhibit 184-I LPI 621 - Photograph M-101-12 dated June 26, 1969, View toward the northwest showing the mouth of Pass A Loutre in the background and Pass A Loutre mudlumps in the foreground

Exhibit 184-J LPI 622 - Photograph M-101-16 dated June 26, 1969, View toward the north, showing a crevasse or splay extending into Blind Bay from the south side of Pass A Loutre, Mississippi Delta

Exhibit 184-K LPI 623 - Photograph M-103-13 dated September 3, 1969, View west showing breaches in the sand spit on the east side of Southwest Pass, Mississippi Delta

Exhibit 184-L LPI 624 - Photograph M-103-16 dated September 3, 1969, View north showing the north end of the sand spit on the east side of Southwest Pass, Mississippi Delta

Exhibit 184-M LPI 625 - Photograph M-104-5 dated September 3, 1969, View toward the northwest showing the marsh on the west side of South Pass, Mississippi Delta. See M-104-6 for comparison.

Exhibit 184-N LPI 626 - Photograph M-104-6 dated September 3, 1969, View northwest showing marsh on the west side of South Pass, Missis-

sippi Delta. Compare with M-104-5

Exhibit 184-O LPI 627 - Photograph M-104-10 dated September 3, 1969, View northeast showing the marsh and natural levees on the west side of South Pass. Note small residual islands in foreground of photograph

Exhibit 184-P LPI 628 - Photograph M-104-11 dated September 3, 1969, Natural levee and marsh along west bank of South Pass, Mississippi Delta. View toward the northeast showing small residual islands in foreground of photograph

Exhibit 184-Q LPI 629 - Photograph M-104-12 dated September 3, 1969, Natural levee and marsh along west bank of South Pass, Mississippi Delta. View toward the northeast showing small residual islands in foreground of photograph

Exhibit 184-R LPI 630 - Photograph M-104-15 dated September 3, 1969, View toward the west showing the mouth of Southwest Pass and sand spit extending into East Bay, Mississippi Delta

Exhibit 184-S LPI 631 - Photograph M-104-16 dated September 3, 1969, View toward the west showing the natural levees of Southwest Pass near its

mouth and the sand spit extending into East Bay, Mississippi Delta. A photograph showing more detail than M-104-15, including breaches in sand spit caused by Hurricane Camille

Exhibit 184-T LPI 632 - Photograph M-105-1 dated October 2, 1969, View toward the south of a portion of Isle Derniere, Terrebonne Parish, Louisiana. The inlet in Isle Derniere shown in the center of the photograph is Coupe Colin

Exhibit 184-U LPI 639 - Photograph M-105-10 dated October 2, 1969, View toward the south showing the marsh and shore line of north shore of Caillou Bay. Note shell material is concentrated in small pockets along the shore line

Exhibit 184-V LPI 641 - Photograph M-105-12 dated October 2, 1969, View toward the north of marsh land extending inland from Isle Derniere. This view is in the opposite direction from M-105-11

Exhibit 184-W LPI 643 - Photograph M-105-16 dated October 2, 1969, View toward the east showing the junction of Bayou Grande Caillou and Bayou du Lac, Terrebonne Parish

Exhibit 184-X LPI 645 - M-53-36

Exhibit 184-Y LPI 646 - M-94-2 dated July 26, 1961

Exhibit 185-A LPI 1058-A This exhibit pertains to shore line changes in the Isle Derniere area for the period 1853 through 1959, as reflected by various maps or surveys of that period

Exhibit 185-B LPI 1058-B - This exhibit pertains to shore line changes in the Caillou Bay-Lake Pelto area for the period 1853 through 1959, as reflected by various maps or surveys of that period

Exhibit 186 LPI 903 - Pertinent parts of 1887 map of the Alluvial Valley of the Mississippi River in overlay form

Exhibit 187 Chart 1050 in overlay form

Exhibit 188-A LPI 1066-A - This exhibit reflects certain island measurement information pertaining to islands and low water elevations in the Derniere area

Exhibit 188-B LPI 1066-B - This exhibit reflects certain island measurement information pertaining to islands and low water elevations in the Shell Keys area.

Exhibit 189 LPI 1063 - This is a collection of reduced scale nautical charts with an index map. The nautical charts included in the exhibit from which the reduced scale copies were made for convenience in handling are charts 1268 through 1277, inclusive.

Exhibit 190 Photograph Album No. 4 of Dr. James P. Morgan, as follows:

LIST OF PHOTOGRAPHS TO ACCOMPANY TESTIMONY OF JAMES P. MORGAN CONCERNING PHYSICAL CHARACTERISTICS OF ISLE DERNIER AND CAILLOU BAY.

(All of the photographs included here were taken by James P. Morgan on the dates indicated).

PART I—COLOR PHOTOGRAPHS

Chronologic Number of Photograph	*Louisiana Preliminary Identifying Number*	*Date of Photography*	*Description of Photograph*
1	606	June 24, 1967	View west down beach of Isle Derniere, Terrebonne Parish, Louisiana.
2	175	October 2, 1969	View north across Trinity Bay, eastern Isle Derniere, Terrebonne Parish, Louisiana.
3	176	October 2, 1969	View north across central Isle Derniere, Caillou Boca in middle ground.
4	177	October 2, 1969	View northward across central Isle Derniere. Caillou Boca in middle ground.

5	978	October 2, 1969	View looking southwest toward western Isle Derniere with Caillou Boca in foreground marshland of old Bayou MiSale extending out toward island.
6	987	October 2, 1969	View looking toward the south of western Isle Derniere. The island is in background, Caillou Boca in foreground.
7	178	October 2, 1969	View northwest across western Isle Derniere. Inlet shown is Coupe Colin. Note new sand spit in forground.
8	183	October 2, 1969	View northwest toward Raccoon Point western Isle Derniere, showing position of new sand spit.
9	607	June 24, 1967	View north toward Coupe Colin opening in Isle Derniere with new sand spit in foreground.
10	964	June 24, 1967	View looking north of western Isle Derniere; new sand spit in foreground; Coupe Colin Inlet in background.
11	608	June 24, 1967	View east along Isle Derniere, Terrebonne Parish, showing new sand spit seaward and west of Coupe Colin beach.

12	180	October 2, 1969	View northeast across western Isle Derniere. Coupe Colin Inlet in right rear of photo. New sand spit in foreground.
13	182	October 2, 1969	View northeast across western Isle Derniere and new sand spit.
14	957	October 2, 1969	View looking southeast showing water boundary line and its relationship to the north shore of Caillou Bay.
15	954	October 2, 1969	View looking toward the northeast showing water boundary in Caillou Bay. Position can be determined from Bayou Goreau in central background.
16	972	October 2, 1969	View looking northeast of north shore of Caillou Bay. Shrimp drying platforms in center of photograph are located near the mouth of Bayou Goreau.
17	975	October 2, 1969	View looking west of north shore Caillou Bay. Shrimp drying platforms on the shore of Bayou Goreau in background.
18	958	October 2, 1969	View looking to the east. East Bay Junop in back-

			ground, Bayou Du West in middle background.
19	950	October 2, 1969	View looking northwest across Pelican Island along north shore of Caillou Bay. East Bay Junop in background, Pelican Pass in right foreground.
20	974	October 2, 1969	View looking north of north shore of Caillou Bay. Stream on left margin of photo is Taylor's Bayou. East Bay Junop in left rear background of photo.
21	187	October 2, 1969	View of north shore of Caillou Bay Terrebonne Parish. Bayou Charbon in right background.
22	186	October 2, 1969	View of north shore of Caillou Bay, Terrebonne Parish. Area west of outlet of Grand Bayou du Large.
23	185	October 2, 1969	View north showing opening of Grand Bayou du Large into Caillou Bay, Terrebonne Parish.
24	184	October 2, 1969	View looking northeast showing northeast shore line of Caillou Bay, Terrebonne Parish.
25	955	October 2, 1969	Another view of water boundary extending out-

			ward into Caillou Bay from north shore of Caillou Bay.
26	1000	October 2, 1969	Water boundary line extending into Caillou Bay from north shore.
27	952	October 2, 1969	Water boundary line extending into Caillou Bay from north shore.
28	969	October 2, 1969	Water boundary line in Caillou Bay extending almost perpendicular to north shore of Caillou Bay. Details of this boundary are shown on additional photos in this series.

PART II—BLACK AND WHITE PHOTOGRAPHS

Chronologic Number of Photograph	*Louisiana Preliminary Identifying Number*	*Date of Photography*	*Description of Photograph*
B & W 1	633	October 2, 1969	View toward the west along Isle Derniere with Raccoon Point in the distance. Coupe Colin Inlet in center of photograph and new sand spit on seaward (left) side of island.
B & W 2	640	October 2, 1969	View toward the south with Isle Derniere in the background. Foreground shows

marsh land surrounding old Bayou MiSale. Caillou Boca separates Isle Derniere from marsh land.

B & W 3	642	October 2, 1969	View south showing the marsh land of old Bayou MiSale. Caillou Boca in foreground and Isle Derniere in background.
B & W 4	636	October 2, 1969	View toward the northwest showing the north shore of Caillou Bay and a foam line indicating a water interface in foreground.
B & W 5	637	October 2, 1969	View toward the east showing the north shore of Caillou Bay. Note the abundant shelly material comprising the beach along the border of the marsh land.
B & W 6	635	October 2, 1969	View toward the east showing the north shore of Caillou Bay with a foam line suggesting a water interface in foreground.
B & W 7	634	October 2, 1969	View toward the northeast showing and the north shore of Caillou Bay and a foam line indicating a water interface in Caillou Bay.
B & W 8	644	October 2, 1969	View toward the east, showing north shore of Caillou Bay. Note decrease in shell towards the east.

B & W 9	638	October 2, 1969	View east of the north shore of Caillou Bay, an area slightly farther to the east than shown on previous photograph (B & W 8) Note lesser amount of shell on beach.

Exhibit 190-A Photo area Index Sheets

Exhibit 191-A LPI 993 - U. S. Army Corps of Engineers Photo No. 902-25 dated October 3, 1929

Exhibit 191-B LPI 995 - U. S. Army Corps of Engineers Photo No. 902-550 dated October, 1929

Exhibit 191-C LPI 996 - U. S. Army Corps of Engineers Photo No. 902-551 dated October, 1929

Exhibit 191-D LPI 997 - U. S. Army Corps of Engineers Photo No. 902-552 dated October, 1929

Exhibit 191-E LPI 998 - U. S. Army Corps of Engineers Photo No. 902-553 dated October, 1929

Exhibit 191-F LPI 999 - U. S. Army Corps of Engineers Photo No. 902-554 dated October, 1929

Exhibit 192 Photograph Album No. 5 of Dr. James P. Morgan, as follows:

LIST OF PHOTOGRAPHS TO ACCOMPANY TESTIMONY OF JAMES P. MORGAN CONCERNING NATURAL ENTRANCE POINTS AT ATCHAFALAYA BAY.

(All of the accompanying photographs were taken on June 6, 1968 by James P. Morgan and previously submitted as part of Exhibit 68, Appendix G, Map Exhibits and Related Materials for Brief of the State of Louisiana in Support of its Motion for Entry of Supplemental Decree No. 2).

Chronologic Number of Photograph	*Photograph Number and Page*	*Description of Photograph*
1	No. 4, Page 1	Point au Fer with North Island lying to its left and with a pronounced oyster reef formation in the foreground. The oyster reef serves as the eastern natural entrance point of Atchafalaya Bay.
2	No. 5, Page 1	Closer view of the oyster reef formation off Point au Fer. North Island can be seen in the background.
3	No. 6, Page 1	Another view from a different angle of the oyster reef off Point au Fer that is the eastern natural entrance point of Atchafalaya Bay.
4	No. 7, Page 1	Looking west at Point au Fer and the reef structures beyond.

5	No. 8, Page 2	Close-up from the ground of the reef formation off Point au Fer that is the eastern natural entrance point of Atchafalaya Bay.
6	No. 10, Page 2	Additional ground photograph of reef formation off Point au Fer.
7	No. 9, Page 2	Another ground photograph of reef formation off Point au Fer. Point au Fer and intervening reef formations can be seen in the background.
8	No. 12, Page 2	Reef formation off Point au Fer with helicopter in the background to show size and extent of reef.
9	No. 13, Page 2	Same reef formation stretching out toward the Gulf of Mexico.
10	No. 15, Page 2	Same reef formation. Looking toward east with Point au Fer and intervening reef formations in the background.
11	No. 11, Page 3	Close-up of oysters and shells on eastern natural entrance point of Atchafalaya Bay. Note that some oysters are up-right or in active growth position. Camera lens case is in photograph to show size.
12	No. 14, Page 3	A part of the reef formation

off Point au Fer showing oysters in active growth position.

13 No. 33, Page 3 Looking northward from just above the western natural entrance point of Atchafalaya Bay. Formations in foreground and winding to right background are islands permanently above high water.

14 No. 31, Page 3 Shell Keys formation, looking northeastward.

15 No. 32, Page 3 Shell Keys again, but looking more nearly due north.

16 No. 34, Page 3 Ground photograph on a Shell Keys island. High-tide line is large ridge in right foreground. Note extent of island to left and rear of photograph.

17 No. 28, Page 4 Some of the reef formations associated with the Shell Keys.

18 No. 25, Page 4 Looking south past Mound Point on Marsh Island toward numerous reef formations leading out to the Shell Keys.

19 No. 30, Page 4 Looking east at reef formations that form a natural barrier blocking entrance into Atchafalaya Bay in this vicinity. Marsh Island is on the left.

20 No. 29, Page 4 Looking west along the shoreline of Marsh Island showing

reef formations extending toward the Shell Keys.

21 No. 26, Page 4 Looking south from Marsh Island down the reef formations and Shell Keys.

22 No. 24, Page 4 Looking south at the western headland Louisiana employs in Atchafalaya Bay. Because the Shell Keys are farther than twenty-four miles from the eastern natural entrance point, Louisiana moves the closing line in to this point. The line Louisiana describes is not quite twenty-four miles long because the shoreline of Marsh Island turns slightly northward just to the right of the point to which Louisiana closes.

Exhibit 192-A Index Map to Volume 5

Exhibit 193-A LPI 535 - U. S. Corps of Engineers Photograph dated February 29, 1956 - P-55, 24-114

Exhibit 193-B LPI 538 - U. S. Corps of Engineers Photograph dated October 29, 1957 - X-2, 550

Exhibit 193-C LPI 539 - U. S. Corps of Engineers Photograph dated October 29, 1957 - X-2, 551

Exhibit 193-AB LPI 572 - U. S. Corps of Engineers Photograph dated November 15, 1969 - 59-111

Exhibit 193-AA LPI 571 - U. S. Corps of Engineers Photograph dated November 15, 1969 - 59-109

Exhibit 193-Y LPI 569 - U. S. Corps of Engineers Photograph dated November 15, 1969 - 59-107

Exhibit 193-X LPI 568 - U. S. Corps of Engineers Photograph dated November 15, 1969 - 59-105

Exhibit 193-AN LPI 584 - U. S. Corps of Engineers Photograph dated November 20, 1969 - 60-4

Exhibit 193-AM LPI 583 - U. S. Corps of Engineers Photograph dated November 20, 1969 - 60-3

Exhibit 194 (Evidence) LPI 1062 - This exhibit pertains to the Atchafalaya Bay complex. It shows natural entrance point and measurement information.

Exhibit 195 LPI 1163 - 24 pages of descriptive notes by Dr. James P. Morgan pertaining to various photographs

Exhibit 196 LPI 917 - Gerdes Map (two pages)

Exhibit 197 LPI 1056 - This display employs base maps, at a reduced scale from the Set of 54 maps, to reflect natural entrance points analyses and measurement data for various pronounced land forms in East Bay

Exhibit 198 This collection of illustrative display materials shows Louisiana closing

line contentions, primary and alternative, for the Caillou Bay area. It also reflects measurement information

Exhibit 199 LPI 1211 - Relevant portions of a map prepared by G. Etzel Pearcy using U.S.C. & G.S. Chart No. 1275 as a base map, at a reduced scale with notes thereon showing color information not reflected by the originals. This map was obtained by Louisiana by the Department of State through the United States Department of Justice.

Exhibit 199-A Same as Exhibit 199, showing colored lines

Exhibit 200 LPI 1213 - Same description as Louisiana Preliminary Identifying No. 1211, except the base map is U. S. C. & G. S. Chart No. 1272

Exhibit 200-A Same as Exhibit 200, showing colored lines

Exhibit 201 Map 2 of 8 of the Set of 54 maps

Exhibit 202 LPI 1068 - U. S. C. & G. S. air photo compilation No. T 5295

Exhibit 203 LPI 1067 - U.S.C. & G.S. air photo compilation No. T5291

Exhibit 204 LPI 905 - U.S.C. & G.S. map H-6492

Exhibit 205 LPI 906 - U.S.C. & G.S. map H-6172

Exhibit 206 LPI 907 - U.S.C. & G.S. map No. 3630

Exhibit 207 LPI 908 - U.S.C. & G.S. map No. 2752

Exhibit 208	LPI 909 - U.S.C. & G.S. map No. 1762
Exhibit 209	LPI 910 - U.S.C. & G.S. map No. 1763
Exhibit 210	LPI 911 - U.S.C. & G.S. map No. 4038
Exhibit 211	LPI 912 - U.S.C. & G.S. map No. 4044
Exhibit 212	LPI 913 - U.S.C. & G.S. map No. 4050
Exhibit 213	LPI 914 - U.S.C. & G.S. map No. T-5403
Exhibit 214	LPI 915 - U.S.C. & G.S. map T-5407
Exhibit 215	LPI 916 - U.S.C. & G.S. map 1691
Exhibit 216	LPI 904 - U.S.C. & G.S. map H-6513
Exhibit 217 A-E	U. S. Army Corps of Engineers maps, in 5 sheets, entitled "Passes of the Mississippi River, La." from photos-aerial surveys made in 1922 and 1929
Exhibit 218 A-F	La. Ex. 1-6; Photographs by Mr. David Morgan of Isle Derniere
Exhibit 219	Overheads from Mr. David Morgan's presentation; figure 1
Exhibit 220	Figure 49; Shalowitz
Exhibit 221	Figure 50; Shalowitz
Exhibit 222	Monterey Bay - Depth of penetration methods and data

Exhibit 223	Monterey Bay - Depth of penetration methods - construction of median line for depth of penetration measurement in Monterey Bay
Exhibit 224	Figure 3 of Mr. David Morgan's depth of penetration memo
Exhibit 225	Figure 4 of Mr. David Morgan's depth of penetration memo
Exhibit 226	Figure 5 of Mr. David Morgan's depth of penetration memo
Exhibit 227	Mr. David Morgan's sketch of fjords
Exhibit 228	Monterey Bay - Method B
Exhibit 229	Mr. David Morgan's Bay Penetration data
Exhibit 230	LPI 1182, a study prepared by Mr. David J. Morgan entitled, "Measurement of Penetration Ratio"
Exhibit 231	Mr. David Morgan's Bucket Bend Bay work map
Exhibit 232	Mr. David Morgan's Caillou Bay work map
Exhibit 233	Mr. David Morgan's West Bay work map
Exhibit 234	Mr. David Morgan's East Bay work map
Exhibit 235	Mr. David Morgan's Norway fjord work map
Exhibit 236-A	Chart 1276, 12th edition
Exhibit 236-B	Chart 1277, 13th edition

Exhibit 237-A	Chart 1274, 10th edition
Exhibit 237-B	Chart 1272, 1970 edition
Exhibit 237-C	Chart 1273 of attachment, 5th edition
Exhibit 238	Talcott map, 1839
Exhibit 239	1918 chart 194
Exhibit 240	1901 chart 194
Exhibit 241	1873 chart 194
Exhibit 242	9th edition, chart 1272 with addenda
Exhibit 243	January 1933, chart 1272
Exhibit 244	April, 1944, chart 1272
Exhibit 245	October 1935, chart 1272
Exhibit 246	February, 1925, chart 1272
Exhibit 247	LPI 1231 - Gauld map sketch
Exhibit 248	Map 2 of 8
Exhibit 249-A	Mr. Philip L. Whitaker's field books (1 of 2)
Exhibit 249-B	Mr. Philip L. Whitaker's field books (2 of 2)
Exhibit 250-A	1198, prel. plat
Exhibit 250-B	1012, signed plat, showing mudlumps at South Pass
Exhibit 251	Geodimeter notes, 1198
Exhibit 252	1014-1023, copy of notes by Mr. Philip L. Whitaker on back of photos numbered 1014-1023
Exhibit 253	Tidal Bench Marks, South Pass

Exhibit 254	LPI 1013, Letter from Harland R. Cravat, Chief, Technical Planning and Operations Branch, Photogrammetry Division, U. S. Department of Commerce, Environmental Science Services Administration, Coast and Geodetic Survey, to Frederick W. Ellis dated August 20, 1970 file #C141
Exhibit 255	Methods of planimetering furnished Mr. Philip L. Whitaker by Mr. David Morgan
Exhibit 256-A	LPI 63 - Copy of portions of a 1911 map of the State of Louisiana issued for the Railroad Commission of Louisiana as a supplement to its twelfth annual report
Exhibit 256-B	LPI 64 - Copy of portions of a map entitled "New Commercial and Census Map of Louisiana" copyrighted in 1917
Exhibit 256-C	LPI 65 - Copy of portions of a map entitled "Post Route map of the State of Louisiana", filed in the map Division of the Library of Congress June 18, 1903
Exhibit 256-D	LPI 66 - Copy of a portion of a map of the State of Louisiana published by the Department of the Interior and compiled from the official records of the General Land Office and other sources under the direction of I. P. Berthong in 1916

Exhibit 257 Joint 1962 agreement

Exhibit 258 LPI 1165 - Map compiled under the direction of I. P. Berthong in 1916, from the official records of the General Land Office and other sources, showing the State of Louisiana, and being a published map from the records of the General Land Office of the Department of the Interior

Exhibit 259 LPI 342 - Message of President Jefferson, 9th Congress, 2nd Session, No. 25, pp. 68-69 (December 2, 1806)

Exhibit 260 LPI 343 - Message of President Jefferson, 8th Congress, 1st Session, No. 21 pp. 61-63 (October 17, 1803)

Exhibit 261 LPI 344 - Report of the Secretary of State, Thomas Jefferson, 2nd Congress, 1st Session, No. 59 (March 7, 1792)

Exhibit 262 LPI 346 - *Journals of the Continental Congress, 1774-1789*, edited from the original records in the Library of Congress by John C. Fitzpatrick, Vol. IIII, 1786, August 1 - December 31 U.S.G.P.O., Washington, 1934. Tuesday, August 29, 1786, pp. 574-596

Exhibit 263 LPI 347 - *The Debates and Proceedings of the Congress of the United States* with an appendix containing important state papers and public documents and all the laws of a public nature. 7th Congress, 2nd Session,

from December 6, 1802, to March 3, 1803, Vol. 12, Washington: Gale & Seaton, 1851. James Madison, Secretary of State to Robert R. Livingston, May 1, 1802, pp. 1027-1028

Exhibit 264 LPI 349 - *The Debates and Proceedings of the Congress of the United States* with an appendix containing important state papers and public documents and all the laws of a public nature. 7th Congress, 2nd Session, from December 6, 1802, to March 3, 1803, Vol. 12, Washington: Gale & Seaton, 1851. Mississippi Question, February 23, 1803, pp. 151-154

Exhibit 265 LPI 350 - *The Debates and Proceedings of the Congress of the United States* with an appendix containing important state papers and public documents and all the laws of a public nature. 7th Congress, 2nd Session, from December 6, 1802, to March 3, 1803, Vol. 12, Washington: Gale & Seaton, 1851. Mississippi Question, February 1803, pp 231-234

Exhibit 266 LPI 356 - Executive Documents & Reports Committees, 27th Congress, 1st Session. Doc. #9, Ho. of Rep., March 6, 1841, Resolution, of the State of La., for a steamship of war to be built on the waters of the Mississippi

Exhibit 267 LPI 357 - Executive Documents &

Reports Committees, 27th Congress, 1st Session. Doc #10, Ho. of Rep., June 12, 1840, Resolution of the Legislature of La. asking that the fortifications at the mouths of the Mississippi be completed and mounted.

Exhibit 268 December, 1932 edition of chart 198

Exhibit 269 October, 1925 edition of chart 1272

Exhibit 270 1937 edition of map of Louisiana - Official Map of Louisiana, first edition

Exhibit 271 April, 1924 edition of chart 194

Exhibit 272 March 1916 edition, which is a reissue of June 1914 edition of chart 194

Exhibit 273 June, 1914 edition of chart 194

Exhibit 274 LPI 1169 - Hardee's Official Map of Louisiana dated 1895

Exhibit 275 October, 1911 edition of chart 194

Exhibit 276 Sketch of waves by F. W. Ellis

Exhibit 277 Chart No. 1272, 23rd Ed., May 1969

Exhibit 278 I.L.C. No. 8 lease, 1956

Exhibit 279 Outer Continental Shelf "Hearings Before A Special Sub-Committee," December 17, 1969, Janaury 22, March 4, pp. 202-208

Exhibit 280 Mr. Stevenson's Speech

Exhibit 281 Dr. Alexander Melamid's published articles from the *Professional Geographer*, with letter to Mr. Jonathan Charney

Exhibit 282 Dr. Alexander Melamid's published articles from the *Oil Forum*, with letter to Mr. Strauss

Exhibit 283 General Documentary Materials, as follows:

LOUISIANA EXHIBIT NO. 283

GENERAL DOCUMENTARY MATERIALS

INDEX

Tab No.	*L.P.I. No.*	*Description*
1	1232	A letter from Robert D. Hodgson to Mr. Jonathan Charney, dated February 2, 1971, with enclosures consisting of letter from Robert D. Hodgson to Commander P. B. Beazley, dated March 31, 1970, and a letter from Commander P. B. Beazley to Dr. Robert D. Hodgson dated May 27, 1970.
2	1233	Part III of *The Law of Territorial Waters* from the Harvard Studies of International Law, Reporter, George Grafton Wilson.
3	1234	A letter from Mr. D. A. McDougal of the office of the Legal Adviser of the Department of State to Mr. Hackworth, dated June 26, 1934, enclosing a memorandum dated June 25, 1934 pertaining to the extent of control that a state may exercise over its territorial waters.

4 1235 A letter from R. S. Patton, Director of the United States Coast and Geodetic Survey, to Samuel W. Boggs of the State Department dated March 3, 1930, enclosing suggestions regarding the three-mile limit or parts thereof pertaining to bays and islands, together with copy of a letter dated March 22, 1930, to Captain Patton from S. W. Boggs, dateline at the Hague, The Netherlands.

5 1237 A letter to Mr. Hackworth from S. W. Boggs dated April 6, 1931, on the letterhead of the Department of State of the office of the Historical Adviser with enclosures pertaining to sundry charts which were the subject of the letter and which were published for the United States Tariff Commission.

6 1238 A letter to Mr. Miller from the Acting Secretary of the Department of State dated February 27, 1930.

6-A 1238 Enclosure with a draft proposal for the League of Nations Hague Conference dated March 17, 1930, showing proposals presented by the Norwegian and Swedish delegations.

7 1299 Copy of memorandum from the Solicitor of the Department of the Interior to the Secretary of the Interior dated Otcober 1, 1954, from records of the Department of the Interior.

8 1300 A group of copies of documents from the records of the American delegation to the

Conference for the Codification of International Law held at the Hague in 1930 consisting of:

(a) A memorandum on the subject of territorial waters dated March 6, 1930 with annotations of the record copy to the effect that the memorandum was to be handed to the Secretary in London, but instead, Mr. Miller talked to the Secretary.

(b) Proposals presented by the Norwegian and Swedish Delegations to Committee II on Bases 3 and 4; 6, 7, and 8.

(c) Amendments proposed by the Delegation of the United States pertaining to Bases of discussion 1, 3, 4, 5, and 6.

(d) A memorandum by S. W. Boggs dated March 22, 1930, pertaining to an interview with a Captain Luymes.

(e) Proposals presented by the Norwegian and Swedish Delegations upon bases of discussions 3 and 4, 6, 7, and 8. (Note, this is apparently the same item described under (b) above except for annotations or marginalia appearing on (b).)

9 1301 A group of documents from records of the Department of State in the National Archives described as follows:

Copies of a group of documents from:

(a) A memorandum from the Legal Adviser of the Department of State to Mr. S. W. Boggs dated March 6, 1935 with the im-

print of the Office to the Geographer of the Department of State.

(b) A memorandum on stationery of the Department of State from "SWB," presumably, S. W. Boggs, to a Mr. Vallance, dated March 7, 1935.

(c) A memorandum dated March 11, 1935 initialed, "W.R.V." from the office of the Legal Adviser of the Department of State stamped with the receipt stamp of the office of the Geographer of the Department of State addressed to Mr. Boggs.

(d) A memorandum from the office of the Historical Adviser of the Department of State dated March 14, 1935 to Mr. Vallance with annotation or marginalia initialed "S.W.B."

(e) A draft with marginalia on the original of a letter to the Secretary of the Interior from the Secretary of State showing initials of "S.W.B." and others.

(f) Another draft of a letter proposed to be sent to the Secretary of the Interior by the Secretary of State bearing initials of "S.W.B." and other persons pertaining to a response to a letter of February 27, 1936. Similar in content to the next preceding letter except that the hand-written additions or annotations thereon (from the originals) differ, this copy having crossed out five lines on the first page, and the preceding draft (item (f) above) having proposed

certain additional language now apparently incorporated in this typed draft.)

(g) A copy of the letter dated March 22, 1935 which was forwarded to the Secretary of the Interior by the Assistant Secretary of State for the Secretary of State in response to The Secretary of the Interior's letter of February 27, 1935.

10 1302 A copy of the *North Atlantic Coast Fisheries Case* between Great Britain and the United States with related documents as reported in the *Hague Court Reports* on pages 142 through 225, inclusive. Handwritten marginalia on the first sheet of the copy are not from the original but are merely file number designations.

11 1303 Copy of the *Fisheries Case* (*United Kingdom v. Norway*) from the records of the International Court of Justice for the year 1951. (Note: the marginalia are from the hand of an unknown past reader of the report and are not submitted.)

13 1477 Bulletin Number Four, Coastal Studies Institute of Louisiana State University. See Technical Report 76: "Effects of Hurricane Camille on the Landscape of the Breton-Chandeleur Island Chain"

14 1482 Executive Order issued by Theodore Roosevelt concerning the declaration of bird preserves for certain islands including Breton Island, dated November 11, 1905.

15 1483 Executive Order issued by Theodore Roosevelt concerning the decalaration of bird pre-

serves for certain islands including Breton Island, dated October 4, 1904.

16 1516 A copy of the transcript of the hearing before the Committee on Foreign Relations, United States Senate, Eighty-Sixth Congress, Second Session concerning *Conventions of the Law of the Sea.*

17 1520 Decision, *Post Office vs. Estuary Radio, Ltd.* Opinion, *Regina vs. Kent Justices.*

18 1549 a & b (a) Letter from President John Quincy Adams to the House of Representatives of the United States dated Washington, 15th January, 1828.

(b) Letter from Henry Clay, Secretary of State, dated January 14, 1828, referred to by President Adams.

19 1008 Copy of letter from Gulf Oil Corporation Law Department (Melvin Evans) dated June 24, 1968, with documents referred to therein.

20 Documents relating to Louisiana's Motion of April, 1970 for publication of documents, together with Responses by the United States.

21 1538 This is a group of documents pertaining to methods of delimitation under the proposal at the Hague Conference in 1930 and other documents pertaining to Tariff Commission Studies all attached to a certification by one Jane F. Smith dated March 2, 1971

Exhibit 284	Deposition of Mr. Christopher Dobard.
Exhibit 284-A	Exhibits to Deposition of Mr. Christopher Dobard.
Exhibit 285	LPI 1526, an exhibit showing straight baselines designated by the United States, its agencies or responsible officials, around parts of the Mississippi Delta area.
Exhibit 286	LPI 1525, an exhibit pertaining to the Caillou Bay region showing straight baselines designated by the United States, its agencies or responsible officials.
Exhibit 287-A-H	1:250,000 AMS Q 501 series maps of Bristol Bay area:
A	4-1 (Goodnews)
B	4-3 (Dillingham)
C	4-4 (Hagemeister Island)
D	4-5 (Nushagak)
E	4-6 (Naknek)
F	4-8 (Bristol Bay)
G	4-9 (Ugashik)
H	4-11 (Chignik)
Exhibit 288	LPI 1274, map labeled Bristol Bay, reference number 3, 4 series 1301, edition 1-AMS, scale 1:1,000,000.
Exhibit 289	LPI 1273, overlay of Delta por-

tion of map labeled Mobile, reference number NH 16, series 1301, edition 1-AMS, scale 1:1,000,000.

Exhibit 290 Johnston's Readyfold Coloured Touring Map.

Exhibit 290-A Film overlay of portion of this map.

Exhibit 291 Sheet 12, map of England S.E. and London - Thames Estuary.

Exhibit 292 Map - East Anglia.

Exhibit 293 Larimore's work map, chart 1272, August 15, 1970 ed., showing planimetry areas within the Mississippi River, South Pass and Southwest Pass. Also markings by James P. Morgan.

Exhibit 294 LPI 1273, map labeled Mobile, reference number NH 16, series 1301, ed. 1-AMS scale 1:1,000,000.

Exhibit 295 LPI 1283, portion of delta area of map labeled Breton Sound, sheet numbered NH 16-7, 1:250,000.

Exhibit 295-A Overlay of above map, exhibit 295.

Exhibit 296 East Bay planimetry information on 24th edition (December 6, 1969) and 25th edition (August 15, 1970) U. S. C. & G. S. nautical chart No. 1272.

Exhibit 297 LPI 1521, an exhibit showing application of the Boggs Reduced Area formula to Monterey Bay and Atchafalaya Bay showing that the

formula was never recognized by law since these bays were adjudicated to be bays acquired by the states in the 19th century.

Exhibit 298 LPI 1298, Enlargement of "Figure 6.—Semicircular rule applied to San Diego Bay, using reduced area method." from 1 *Shalowitz* 39 (1962).

Exhibit 299 LPI 1517, East Bay Shoreline, January 24, 1970 from Coast and Geodetic Survey Color Photography Curtis Buttorff interpretation.

Exhibit 300 LPI 1524, an exhibit showing interpretation of 1954 aerial photography by Mr. Curtis Buttorff, former United States closing lines and modified water gap information, all pertaining to additional low water line information in the vicinity of Isle Derniere.

Exhibit 301 Overlay of the South Pass sheet. (Map 4 of 8 coverage at scale of 1:20,000 and on which Buttorff interpreted East Bay shore line.)

Exhibit 302 LPI 1271, photograph, Ammann identifying No. 727-124, dated 1/7/54.

Exhibit 303 LPI 1270, photograph, Ammann identifying No. 727-123, dated 1/7/54.

Exhibit 304 LPI 1269, photograph, Ammann

identifying No. 727-122, dated 1/7/54.

Exhibit 305 LPI 1268, photograph, Ammann identifying No. 727-121, dated 1/7/54.

Exhibit 306 LPI 1267, photograph, Ammann identifying No. 727-120, dated 1/7/54.

Exhibit 307 LPI 1266, photograph Ammann identifying No. 727-119, dated 1/7/54.

Exhibit 308 LPI 1265, photograph, Ammann identifying No. 727-118, dated 1/7/54.

Exhibit 309 LPI 1264, photograph, Ammann identifying No. 727-38, dated 1/7/54.

Exhibit 310 LPI 1263, photograph, Ammann identifying No. 726-96, dated 1/8/54.

Exhibit 311 LPI 1293, photograph, Ammann identifying No. 727-197, dated 1/8/54.

Exhibit 312 LPI 1292, photograph, Ammann identifying No. 727-177, dated 1/8/54.

Exhibit 313 LPI 1291, photograph, Ammann identifying No. 727-176, dated 1/8/54.

Exhibit 314 LPI 1290, photograph, Ammann

identifying No. 727-175, dated 1/8/54.

Exhibit 315 LPI 1289, photograph, Ammann identifying No. 727-144, dated 1/7/54.

Exhibit 316 LPI 1288, photograph, Ammann identifying No. 727-135, dated 1/7/54.

Exhibit 317 LPI 1287, photograph, Ammann identifying No. 727-134, dated 1/7/54.

Exhibit 318 LPI 1286, photograph, Ammann identifying No. 727-133, dated 1/7/54.

Exhibit 319 LPI 1285, photograph, Ammann identifying No. 727-126, dated 1/7/54.

Exhibit 320 LPI 1284, photograph, Ammann identifying No. 727-125, dated 1/7/54.

Exhibit 321 LPI 1304, photo mosaic obtained from Ammann International Corp. compiled from photos of Jack Ammann Photogrammetric Engineers, Inc. based upon 1954 aerial photography employed in preparation of the Set of 54 maps, sheet L 39.

Exhibit 322 LPI 1305, photo mosaic obtained from Ammann International Corp, compiled from photos of Jack Ammann Photogrammetric Engineers, Inc., based upon 1954 aerial photo-

graph employed in preparation of the Set of 54 maps, sheet L 40.

Exhibit 323 Natural Entrance point alternative at South Pass at various tide stages. Location 1, overlay, made by Curtis Buttorff at National Ocean Survey.

Exhibit 324 George H. Lauff, ed., *Estuaries*, American Association for the Advancement of Science, No. 83 (1967).

Exhibit 325 LPI 1478, map of Yarmouth-Windsor area of Nova Scotia, published by Canadian government showing bay of Fundy and St. Mary's Bay area LPI 1479, map labeled Church Point N. S., 21 B/8 West half, first edition;

LPI 1480, map labeled Church Point, N. S., 21 B/8 East Half, first edition;
LPI 1481, map labeled Digby, N. S., 21 A/12 West Half, second edition, all dealing with St. Mary's Bay.

Exhibit 326 1886 Chart of Breton Island Sound

Exhibit 327-A Map 20 of 41, Buttorff work sheet of Isle Derniere, analyzing Ammann photos.

Exhibit 327-B Map 19 of 41, Buttorff work sheet of Isle Derniere, analyzing Ammann photos.

Exhibit 328 LPI 1463, David Morgan's index to photos taken along South Pass and showing artificial maintenance of openings by Corps of Engineers (sheet 4 of 8).

Exhibit 329 Photograph Album Vol. 3 of Dr. James P. Morgan, concerning artificial maintenance of openings between South Pass and East Bay (for rebuttal).

LIST OF PHOTOGRAPHS TO ACCOMPANY REBUTTAL TESTIMONY OF JAMES P. MORGAN CONCERNING ARTIFICIAL MAINTENANCE OF OPENINGS BETWEEN SOUTH PASS, MISSISSIPPI RIVER, AND EAST BAY

(The following photographs illustrate artificially maintained openings from South Pass of the Mississippi River into East Bay. The photographs depict openings on the west bank of South Pass consecutively from south to north. Figure 1, pages 1 through 5 (LPI #1463) accompanying the photographs, indicates the position of each photographed opening. All photographs were taken by David J. Morgan unless otherwise indicated.)

Chronologic Number of Photograph	*Louisiana Preliminary Identifying Number*	*Date of Photography*	*Description of Photographs*
1	1420	February 23, 1971	View west of opening shown on Fig. 1, page 1.

2	1414	February 23, 1971	View west of opening shown on Fig. 1, page 1.
3	1406	February 23, 1971	View west of opening shown on Fig. 1, page 1.
4	1405	February 23, 1971	View west of opening shown on Fig. 1, page 1.
5	1425	February 23, 1971	View west of U.S. Coast Guard Light Station. (Fig. 1, pages 1 and 2)
6	1418	February 23, 1971	View west of opening shown on Fig. 1, page 2.
7	1417	February 23, 1971	View west of opening shown on Fig. 1, page 2.
8	1416	February 23, 1971	View west of opening shown on Fig. 1, page 2.
9	1396	February 23, 1971	View west of opening shown on Fig. 1, page 2.
10	1415	February 23, 1971	View west of opening shown on Fig. 1, page 2.
11	1397	February 23, 1971	View west of opening shown on Fig. 1, pages 2 and 3.
12	1365	February 23, 1971	View west of opening shown on Fig. 1, pages 2 and 3.
13	1419	February 23, 1971	View west of opening shown on Fig. 1, pages 2 and 3.
14	1404	February 23, 1971	View west of opening shown on Fig. 1, pages 2 and 3.
15	1362	February 23, 1971	View west of opening shown on Fig. 1, pages 2 and 3.

			Photograph by James P. Morgan
16	1361	February 23, 1971	View west of opening shown on Fig. 1, pages 2 and 3. Photograph by James P. Morgan
17	1351	February 23, 1971	View west of opening shown on Fig. 1, pages 2 and 3.
18	1350	February 23, 1971	View west of Oysterville Light and opening to west shown on Fig. 1, page 3. Photograph by James P. Morgan
19	1375	February 23, 1971	View west of opening immediately north of Oysterville Light shown on Fig. 1 page 3.
20	1360	February 23, 1971	View west of opening shown on Fig. 1, page 3.
21	1376	February 23, 1971	View west of opening shown on Fig. 1, page 3.
22	1359	February 23, 1971	View west of opening shown on Fig. 1, page 3. Photograph by James P. Morgan
23	1366	February 23, 1971	View northwest of opening shown on Fig. 1, pages 3 and 4. Photograph by James P. Morgan
24	1403	February 23, 1971	View northwest of opening shown on Fig. 1, pages 3 and 4.

25	1422	February 23, 1971	View west of opening shown on Fig. 1, pages 4 and 5.
26	1421	February 23, 1971	View northwest of opening shown on Fig. 1, pages 4 and 5.
27	1423	February 23, 1971	Detail of rip-rap at opening shown on Fig. 1, pages 4 and 5.
28	1373	February 23, 1971	View west of rip-rap controlled opening shown on Fig. 1, pages 4 and 5.
29	1372	February 23, 1971	View west of rip-rap controlled opening shown on Fig. 1, pages 4 and 5.
30	1371	February 23, 1971	View west of rip-rap controlled opening shown on Fig. 1, pages 4 and 5.
31	1401	February 23, 1971	View west of rip-rap blocking opening shown on Fig. 1, page 5.
32	1402	February 23, 1971	View west of rip-rap controlled opening shown on Fig. 1, page 5.
Exhibit 330			Photograph album of Mr. David J. Morgan of Isle Derniere area.

DESCRIPTION OF PHOTOGRAPHS AND RELATED LOCATION MAPS CONCERNING THE ISLE DERNIERE AREA

(All photographs taken by David J. Morgan unless otherwise annotated)

Chronologic Number of Illustration	*Louisiana Preliminary Identifying Number*	*Date of Photograph or Publication*	*Description of Photograph or Illustration*
1			Index map of Isle Derniere area showing location of Figures 1-5.
2			Figure 1 - portion of Cocodrie Quadrangle, 7.5 minute series showing approximate locations of photographs taken in that vicinity.
3	1256	September 5, 1970	View NNW of marsh vegetation in vicinity of Pass La Poule in Lake Pelto.
4	1261	September 5, 1970	View NE of marsh vegetation in vicinity of Pass La Poule in Lake Pelto.
5	1532		Figure 2 - Portion of sheet 18 of 41 of the Set of 54 Maps showing approximate locations of photographs taken in that vicinity.
6	1239	September 5, 1970	Wave action in Lake Pelto - view northward.

7	1245	September 5, 1970	Wave action in Lake Pelto - view northward.
8	1242	September 5, 1970	Remnant of Bobwin Point, former distributary in Lake Pelto. View N.
9	1262	September 5, 1970	View southward down west side of pinnacle of land extending northward to the west of Old Camp Pass.
10	1243	September 5, 1970	Pinnacle of land extending northward west of Old Camp Pass, looking NE.
11	1260	September 5, 1970	Detail of organic clay composing land in rear of island; exhumed vegetation in background.
12	1259	September 5, 1970	View facing south down pinnacle of land at rear of island to the west of Old Camp Pass.
13	1232		Figure 3 - portion of sheet 19 of 41 of the Set of 54 Maps showing the approximate position of photographs taken in that vicinity.
14	1252	September 5, 1970	View looking south at vegetation characteristics at rear of island.
15	1248	September 5, 1970	View looking south at boat traffic in Caillou Bay. Isle Derniere in background.

16	1544	March 13, 1971	View looking west at peninsula in Bay Round vicinity, north of Isle Derniere. (James P. Morgan)
17	1545	March 13, 1971	Vegetation characteristics on peninsula in Bay Round vicinity. (James P. Morgan)
18	1546	March 13, 1971	Vegetation characteristics on peninsula in Bay Round vicinity. (James P. Morgan)
19	1547	March 13, 1971	Vegetation characteristics on peninsula in Bay Round vicinity. (James P. Morgan)
20	1532		Figure 4 - portion of sheet 19 of 41 of the Set of 54 Maps showing the approximate positions of photographs taken in that vicinity.
21	1244	September 5, 1970	View of north shore of Caillou Bay showing vegetation characteristics. View eastward.
22	1532		Figure 5 - portion of sheet 20 of 41 of the Set of 54 Maps showing the approximate position of photographs taken in that vicinity.
23	1251	September 5, 1970	View looking north at exhumed island vegetation mud flat to the west of Coupe Colin.

24	1249	September 5, 1970	View NE across Coupe Colin at fishing camp on second island.
25	1253	September 5, 1970	View NE across Coupe Colin at fishing camp on second island.
26	1247	September 5, 1970	View loking ESE at back of westernmost island of Isle Derniere.
27	1250	September 5, 1970	View southward of westernmost island of Isle Derniere showing mangrove and other vegetation. (With D. J. Morgan)
28	1246	September 5, 1970	View southward of westernmost island of Isle Derniere showing mangrove and other vegetation. (With F. W. Ellis)
29	1255	September 5, 1970	View SW down rear of westernment island of Isle Derniere.
30	1258	September 5, 1970	Bateau on beach at rear of westernmost island approaching Raccoon Point. Exhumed marsh in foreground. View looking east.
31	1240	September 5, 1970	View looking east down westernmost island showing general characteristics of the island. Gulf of Mexico is to the extreme right.

32	1254	September 5, 1970	View looking northward showing vegetation characteristics-Caillou Bay in background.
33	1255	September 5, 1970	View looking west down westernmost island showing vegetation and general characteristics. Caillou Bay to right and Gulf to left.
34	1241	September 5, 1970	View looking west down beach of westernmost island of Isle Derniere. Gulf of Mexico to left.

Exhibit 331 A through E	LPI 1548, hand-written summary report of David Morgan concerning comparison of the shapes and areas of water gap and island configurations in the Isle Derniere area plus annexed Xerox copies of map information.
Exhibit 332 A and B	LPI 1484, record of the United States Coast and Geodetic Survey of the Department of Commerce showing hourly heights of tides at Eugene Island, Louisiana, dated February 5, 1954 for the period January 1 through January 14, referenced to a datum of 1.6 feet below mean low water.
Exhibit 333-A	LPI 1294, statement by E. T. Oliver, Jr., dated February 18, 1971, concerning the records of Ammann In-

ternational Corporation and predecessor firms being in his custody.

Exhibit 333-B LPI 1295, film record card of Jack Ammann Photogrammetric Engineers, numbered 726, referred to in LPI No. 1294.

Exhibit 333-C LPI 1296, film record card of Jack Ammann Photogrammetric Engineers, numbered 727, referred to in LPI No. 1294.

Exhibit 333-D LPI 1297, statement from E. T. Oliver, Jr. of information obtained from original file record cards, statement dated February 18, 1971, and originally attached to LPI No. 1294.

Exhibit 334 LPI 1485, a document entitled, "Summary of Tide Information pertaining to 1954 Ammann Photography in the Isle Derniere Area."

Exhibit 334-A Drawing by David Morgan regarding tide information derived from the Eugene Island gauge.

Exhibit 335 LPI 1518, a sketch prepared to graphically reflect wind direction information presented in testimony of Mr. Arthur I. Cooperman.

Exhibit 336 Mylar overlay of 24th edition of chart 1272, December 1969, delimiting areas for planimetry.

Exhibit 337 Mylar overlay of 25th edition of chart 1272, August, 1970, delimiting areas for planimetry.

Exhibit 338 Sketch by David Morgan illustrating scale problems on maps.

Exhibit 339 Work sheets showing data for 45-degree test in the Caillou Bay area (in comparison with United States Exhibit 355).

Exhibit 340 Photograph Album Vol. 1 of Dr. James P. Morgan, concerning mudlumps, South Pass sand spit, and Bucket Bend Bay area.

LIST OF PHOTOGRAPHS TO ACCOMPANY THE REBUTTAL TESTIMONY OF JAMES P. MORGAN CONCERNING PHYSICAL CHARACTERISTICS OF MISSISSIPPI DELTA MUDLUMPS, SOUTH PASS SAND SPIT AND BUCKET BEND BAY AREA

(All of the Photographs included here were taken by James P. Morgan unless otherwise indicated.)

PART I—COLOR PHOTOGRAPHS

Chronologic Number of Photograph	*Louisiana Preliminary Identifying Number*	*Date of Photography*	*Description of Photographs*
1	1434	February 21, 1971	River silt and "mainland" vegetation on mudlump at Southeast Pass. View northwest.
2	1452	February 21, 1971	Buck brush and isolated clumps of Roseau on South-

			east Pass mudlump. View north.
3	1429	February 21, 1971	Vegetation including Roseau on west (bayside) of Southeast Pass mudlump. View north.
4	1450	February 21, 1971	Rangia clams (indicative of marshland lakes) on Southeast Pass mudlump.
5	1445	February 21, 1971	Feces of coypu (nutria) in Bermuda grass on Southeast Pass mudlump.
6	1345	February 21, 1971	Very shallow water between Southeast Pass mudlumps indicated by significant waves generated over short fetch between islands. View north.
7	1369	February 22, 1971	Flock of terns disturbed on Pass a Loutre mudlumps. View north.
8	1367	February 22, 1971	Mudlumps off mouth of Pass a Loutre. View west.
9	1379	February 22, 1971	Mudlump islands off mouth of South Pass. View northeast. Photo by David J. Morgan.
10	1380	February 22, 1971	Mudlump islands off mouth of South Pass. View northeast. Photo by David J. Morgan.

11	1378	February 22, 1971	Mudlump islands off mouth of South Pass. View north Photo by David J. Morgan.
12	1377	February 22, 1971	Dr. Morgan collecting fossils from South Pass mudlump 89-90; being watched by Mr. Ellis. Photo by David J. Morgan.
13	1431	February 22, 1971	Fire ant mount on South Pass mudlump 89-90. Photo by David J. Morgan.
14	1441	February 23, 1971	Feces of coypu (nutria) on mud-cracked surface of South Pass mudlump 93.
15	1432	February 23, 1971	Feces of coypu (nutria) around mud puddle on mudlump 89-90. Photo taken by David J. Morgan.
16	1476	February 23, 1971	Telephoto view of South Pass Coast Guard Station and sand spit. View northeast. (No. 1 of a 7-photo panorama.)
17	1473	February 23, 1971	Telephoto view of South Pass Coast Guard Station and sand spit. View north. (No. 2 of a 7-photo panorama.)
18	1470	February 23, 1971	Telephoto view of South Pass Coast Guard Station and sand spit. View north. (No. 3 of a 7-photo panorama.)

19	1474	February 23, 1971	Telephoto view of South Pass Coast Guard Station and sand spit. View north. (No. 4 of a 7-photo panorama.)
20	1471	February 23, 1971	Telephoto view of South Pass Coast Guard Station and sand spit. View north. (No. 5 of a 7-photo panorama.)
21	1472	February 23, 1971	Telephoto view of South Pass Coast Guard Station and sand spit. View northwest (No. 6 of a 7-photo panorama.)
22	1475	February 23, 1971	Telephoto view of South Pass Coast Guard Station and sand spit. View northwest. (No. 7 of 7-photo panorama.)
23	1512	March 6, 1971	Mouth of South Pass showing sand spit which has reformed since Hurricane Camille and mudlumps in distance. View southwest.
24	1510	March 6, 1971	Mouth of South Pass showing sand spit which has reformed since Hurricane Camille. Mudlumps in distance. View north.
25	1509	March 6, 1971	Mouth of South Pass showing sand spit which has reformed since Hurricane Camille. Mudlumps in distance. View east.

26	1437	February 23, 1971	Vegetation surrounding pond on South Pass mudlump 93. View southwest.
27	1382	February 23, 1971	Mud vent discharging brine into pond on South Pass mudlump 93. View southeast.
28	1438	February 23, 1971	Vegetation surrounding pond on South Pass mudlump 93. View northwest.
29	1496	March 6, 1971	View west toward the interior of Cubits Crevasse area north of Bucket Bend Bay.
30	1495	March 6, 1971	View west toward the interior of Cubits Crevasse area north of Bucket Bend Bay. Area immediately south of Photo No. 29.
31	1497	March 6, 1971	View toward southwest of Bucket Bend Bay.
32	1493	March 6, 1971	View toward southwest of Bucket Bend Bay.
33	1491	March 6, 1971	View toward southwest of Bucket Bend Bay. Pass a Loutre in the background.
34	1499	March 6, 1971	View west of Bull Bay (inner part of Bucket Bend Bay) and Paddy Bay. Pass a Loutre to left of photo.

35	1487	March 6, 1971	View north of Paddy Bay at upper end of Bucket Bend Bay. Pass a Loutre in left foreground.
36	1486	March 6, 1971	View to the northeast of Bucket Bend Bay and opening into Gulf.
37	1515	March 6, 1971	Marsh area south of Bucket Bend Bay. Mud flats reflect tide stage.
38	1514	March 6, 1971	Marsh area south of Bucket Bend Bay. Mud flats reflect tide stage.

PART II—BLACK AND WHITE PHOTOGRAPHS

Chronologic Number of Photograph	*Louisiana Preliminary Identifying Number*	*Date of Photography*	*Description of Photographs*
B & W 1	1307	March 6, 1971	Aerial view to northeast of Paddy Bay (foreground), Bull Bay (middle ground), and Gulf in Bucket Bend Bay area.
B & W 2	1465	March 6, 1971	Aerial view to the southwest showing Bucket Bend Bay area with Pass a Loutre in distance.
B & W 3	1468	March 6, 1971	Aerial view to the southwest showing Bucket Bend Bay area with Pass a Loutre in distance.

B & W 4	1469	March 6, 1971	View to the southwest showing ship entering South Pass with sand spit and mudlump islands in distance.

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Exhibit 341 Photograph album, Vol. 2 by Dr. James P. Morgan, concerning Joseph Bayou area.

LIST OF PHOTOGRAPHS TO ACCOMPANY THE REBUTTAL TESTIMONY OF JAMES P. MORGAN CONCERNING THE PHYSICAL CHARACTERISTICS OF THE JOSEPH BAYOU AREA, EAST BAY MISSISSIPPI DELTA

(All of the photographs included here were taken by James P. Morgan unless otherwise indicated.)

PART 1 - COLOR PHOTOGRAPHS

Figure 1 - Index Map showing photograph directions and locations by LPI Number.

Chronologic Number of Photograph	*Louisiana Preliminary Identifying Number*	*Date of Photography*	*Description of Photographs*
1	1357	February 22, 1971	View north from Joseph Bayou showing levees in foreground and dredged spoil in distance.
2	1346	February 22, 1971	View northeast from Joseph Bayou showing levees in

			foreground and dredged spoil in distnace.
3	1347	February 22, 1971	View east from Joseph Bayou across levee.
4	1355	February 22, 1971	View east across Joseph Bayou levee.
5	1356	February 22, 1971	View southeast down Joseph Bayou and left bank natural levee.
6	1353	February 22, 1971	View northeast across Joseph Bayou natural levee (middle ground) showing Roseau clumps in distance.
7	1354	February 22, 1971	View north from canal in Joseph Bayou area. See attached map (Fig. 1) for location.
8	1408	February 22, 1971	Well location in Joseph Bayou canal. See Fig. 1 for location.
9	1407	February 22, 1971	Well location in Joseph Bayou canal. See Fig. 1 for location.
10	1411	February 22, 1971	View northwest from Joseph Bayou canal showing crew boat in another canal in distance. See Fig. 1 for location.
11	1410	February 22, 1971	Deteriorating marshland in Joseph Bayou area. View

			north. See Fig. 1 for location.
12	1409	February 22, 1971	View northwest across deteriorating marshland in Joseph Bayou area. See Figure 1 for location.
13	1400	February 22, 1971	View southeast out mouth of Joseph Bayou into East Bay. See Fig. 1 for location.
14	1413	February 22, 1971	View northwest of Roseau marshland of Joseph Bayou area. See Fig. 1 for location.
15	1394	February 22, 1971	View north of Roseau marshland near mouth of Joseph Bayou. See Fig. 1 for location.
16	1398	February 22, 1971	View north of Roseau marshland near mouth of Joseph Bayou. See Fig. 1 for location.
17	1457	February 22, 1971	Mr. Ellis standing in Roseau clump at mouth of Joseph Bayou. See Fig. 1 for location. Photo by David J. Morgan.
18	1459	February 22, 1971	Mr. Ellis standing in Roseau clump at mouth of Joseph Bayou. See Fig. 1 for location. Photo by David J. Morgan.
19	1458	February 22, 1971	Mr. Ellis standing in Roseau clump at mouth of Joseph

			Bayou. See Fig. 1 for location. Photo by David J. Morgan.
20	1456	February 22, 1971	Mr. Ellis showing result of standing in Roseau clump at mouth of Joseph Bayou. Photo by David J. Morgan.
21	1381	February 22, 1971	Mr. Ellis showing result of standing in Roseau clump at mouth of Joseph Bayou. Photo by David J. Morgan.
22	1539	March 6, 1971	Aerial view toward southwest of the Joseph Bayou area. Southwest Pass in background.
23	1540	March 6, 1971	Aerial view toward southwest of the Joseph Bayou area. Southwest Pass in background.
24	1541	March 6, 1971	Aerial view toward southwest of the Joseph Bayou area. Southwest Pass in background.
25	1542	March 6, 1971	Aerial view toward southwest of the Joseph Bayou area. Southwest Pass in background.
26	1543	March 6, 1971	Aerial view toward southwest of the Joseph Bayou area. Southwest Pass in background.

PART II - BLACK AND WHITE PHOTOGRAPHS

Chronologic Number of Photograph	*Louisiana Preliminary Identifying Number*	*Date of Photography*	*Description of Photograph*
B & W 1	1326	February 22, 1971	Part of a 3-photo panorama (LPI #1523A) showing Joseph Bayou area; same region as shown on Fig. 1.
B & W 2	1327	February 22, 1971	Part of a 3-photo panorama (LPI #1523A) showing Joseph Bayou area; same region as shown on Fig. 1.
B & W 3	1328	February 22, 1971	Part of a 3-photo panorama (LPI #1523A) showing Joseph Bayou area; same region as shown on Fig. 1.
B & W 4	1329	February 22, 1971	Detail of Roseau marshland at the mouth of Joseph Bayou. View east (same location as LPI #1381, Fig. 1)
B & W 5	1340	February 22, 1971	Mr. Ellis standing in Roseau at the mouth of Joseph Bayou. View east (same location as LPI #1381, Fig. 1).

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Exhibit 342 LPI 1523-B, panorama of Dr. Morgan's photos of tombolo at South Pass.

Exhibit 343 LPI 1523-A, black and white panorama of Joseph Bayou area.

Exhibit 344 LPI 1522, an exhibit reflecting hydrographic information pertaining to the Pass a Loutre area. (colored)

Exhibit 345 Mylar film of map 2 of 8, North Pass, Pass a Loutre, to overlay exhibit 344.

Exhibit 346 Mylar film of map of Southeast Pass mudlumps, map 3 of 8, at reduced scale (approximately 1:30,000) to overlay Louisiana Exhibit 216.

Exhibit 347 Mylar film of mouth of South Pass from map 4 of 8 at reduced scale (approximately 1:30,000) to overlay Louisiana Exhibit 216.

Exhibit 348 Memo of area in acres of Mississippi River below Venice by Larimore.

Exhibit 349 *Water Borne Commerce of the United States*, Corps of Engineers, pp. 179-80 (1967)

Exhibit 350 *Water Borne Commerce of the United States*, Corps of Engineers, pp. 181-82 (1968)

Exhibit 351 *Water Borne Commerce of the United States*, Corps of Engineers, pp. 189-90 (1969)

Exhibit 352 Brief Exhibit 70-118, appendix G. of Louisiana Brief before the Supreme Court. Harbor works to show channel depths (Corps of Engineers).

Exhibit 353 Three-mile projection plotted on reduced scale Set of 54 Maps (w/documents from Louisiana Answers to Second Interrogatories affixed to front cover)

Exhibit 353-A Computer printout of three-mile projection (done by Louisiana State University) (w/one-page attachments).

Exhibit 354 B-G Norwegian maps

Exhibit 355 The *In Camera* documents; Confidential documents; no copy allowed.

Exhibit 356 (a) Letter from Solicitor General Perlman to Boliver E. Kemp, Jr., Attorney General for the State of Louisiana, dated March 16, 1951. This letter has been introduced in evidence as U. S. Exhibit No. 341.

(b) The copies of the United States Coast and Geodetic Survey Charts Nos. 1115 and 116 upon which was delineated the line showing the general location of the landward boundary of the offshore area claimed by the United States, which were attached to the letter by Mr. Philip B. Perlman, Solicitor General, to the Honorable Boliver E. Kemp, Jr., dated March 16, 1951.

(c) Letter from Solicitor General Perlman to Boliver E. Kemp, Jr., At-

torney General of the State of Louisiana, dated June 12, 1951

(d) Letter from Solicitor General Perlman to Boliver E. Kemp, Jr., Attorney General of the State of Louisiana, dated June 26, 1951.

(e) Letter from Secretary of State Seward to Gabriel Tassara, Spanish Minister, dated August 10, 1863, which appears in 1 Moore *Digest of International Law*, 1906, p. 711.

(f) Hall *International Law* 8th Edition, 1917, pages 126, 127.

(g) Senate Document No. 162, 58th Congress, 2d Session, pages 239-240; page 221, pages 224 to 228 and pages 15 and 16, and Volume 4, Part I, Counter Case of the United States, pages 131-132; Volume 5, Part I, Argument of the United States, pages 14-18; Volume 7, pages 605-611, pages 543-548.

APPENDIX II, Part 3

INDEX TO THE EVIDENCE INTRODUCED BY THE UNITED STATES IN THE PROCEEDING BEFORE WALTER P. ARMSTRONG, JR., SPECIAL MASTER

Exhibit 1	Descriptive Report, Planimetric and Mean-Low Water Line Mapping Projects PH-5903 and 20,000-819 Part I - Mississippi River Delta, T-10944 to T-10957
Exhibit 2	Compilation Report, Mississippi Delta, Louisiana Map Numbers T-10944 through 10957, Bureau of Land Management Numbers 1 through 8
Exhibit 3	Reprint from the International Hydrographic Review, Vol. XXXVIII, No. 1, January 1961, Mapping the Low-Water Line of the Mississippi Delta
Exhibit 4	Descriptive Report, Shoreline and Mean-Low Water Line Mapping - Project 20,000-819 Part II—T11993-T-11997, Atchafalaya Bay
Exhibit 5	Hand held photographs taken during 1960-1961 Atchafalaya Bay Survey and Descriptive Area Maps
Exhibit 6	Aerial Photographs Nos.: L8606 - L8612, L9036, L9035, L9034, L9033, L9032, L9031, L9030, L9029, L8703, L8704, L9003, L9002, L9001

Field Inspection Photographs Nos.:
L8606 - L8609, L8703

Exhibit 7 Aerial Photographs Nos.:
L8720 - L8729, L8984 - L8989, 08713, L8991
Field Inspection Photographs Nos.:
L8991, L8983, L8985, L8987, L8989, L8727

Exhibit 8 Letter from Wesley A. D'Ewart, Assistant Secretary of the Interior, to William G. Helis, Chairman, Louisiana State Mineral Board, July 11, 1956

Exhibit 9 Letter from William G. Helis, Chairman, Louisiana State Mineral Board, to Wesley A. D'Ewart, Assistant Secretary of the Interior, July 23, 1956

Exhibit 10 Memorandum for the Record, by Earl G. Harrington, Cadastral Engineering Staff Officer, and Donald B. Clement, Cadastral Engineering Officer, for the Interior Department Committee, August 27, 1956

Exhibit 11 Letter from Earl G. Harrington, Chairman, Interior Committee, to Gordon I. Atwater, August 30, 1956

Exhibit 12 Letter from Gordon Atwater to William G. Helis, Jr., Chairman, Louisiana State Mineral Board, September 19, 1956

Exhibit 13 Letter from Gordon Atwater to Earl

G. Harrington, Cadastral Engineering Staff Officer, Bureau of Land Management, September 4, 1956

Exhibit 14 Letter from Earl G. Harrington, Cadastral Engineering Staff Officer, Bureau of Land Manangement, to Gordon Atwater, September 25, 1956

Exhibit 15 Letter from Gordon Atwater to William G. Helis, Jr., Chairman, Louisiana State Mineral Board, January 10, 1957

Exhibit 16 Letter from Gordon Atwater to Donald B. Clement, Acting Cadastral Engineering Staff Officer, Bureau of Land Management, June 12, 1957

Exhibit 17 Letter from Gordon Atwater to Al Glodt, Chairman, Offshore Oeprators Committee, August 9, 1957

Exhibit 18 Letter from Gordon Atwater to T. H. Montgomery, May 28, 1958

Exhibit 19 Letter from Gordon Atwater to Rear Admiral H. Arnold Karo, Director, Coast and Geodetic Survey, June 5, 1958

Exhibit 20 Letter from Gordon Atwater to William Helis, Jr., Committee Chairman, Louisiana State Mineral Board, July 16, 1958

Exhibit 21 Letter from Gordon Atwater and H. M. Hayne, for the State of Louisiana, and Earl G. Harrington and Donald

B. Clement, for the Department of the Interior, to William G. Helis, Jr., Chairman, Louisiana State Mineral Board, August 29, 1958

Exhibit 22 Letter from Gordon Atwater to William G. Helis, Chairman, Louisiana State Mineral Board, February 17, 1959

Exhibit 23 Letter from Gordon Atwater to Earl J. Thomas, Acting Director, Bureau of Land Management, February 23, 1959

Exhibit 24 Letter from Edward Woozley, Director, Bureau of Land Management, to the Director, Coast and Geodetic Survey, March 19, 1959

Exhibit 25 Letter from James C. Tison, Jr., for Rear Admiral H. Harold Karo, Director, Coast and Geodetic Survey, to Gordon Atwater, November 17, 1959

Exhibit 26 Letter from McLain J. Forman to Rear Admiral H. Arnold Karo, Director, Coast and Geodetic Survey, November 19, 1959

Exhibit 27 Letter from Donald B. Clement to Gordon Atwater, November 2, 1961

Exhibit 28 Letter from Gordon Atwater to Donald B. Clement, Consultant, Cadastral Engineering Office, Bureau of Land Management, November 10, 1961

Exhibit 29 Letter from Gordon Atwater to W. Scott Wilkinson, December 1, 1961

Exhibit 30 Report of the Determination of the Contact Line of Mean Low Water of the Gulf of Mexico with the Mainland and Adjacent Islands of the State of Louisiana, by a Committee Representing the U.S. Dept. of Interior and a Committee Representing the State of Louisiana, December 20, 1961

Exhibit 31 John Seldon, *Of the Dominion, or, Ownership of the Sea* (Mare Clausum), transl. by Marchamont Nedham (London, 1652) Book II, Chapter 2, p. 188

Exhibit 32 *The Anna*, 5 Chr. Robinson, Admiralty Reports 373 (1806).

Exhibit 33 Letters from Edward Everett, Ambassador to Great Britain, to Lord Aberdeen, British Foreign Secretary, March 25, 1845, and to James Buchanan, Secretary of State, April 23, 1845, S. Exec. Doc. No. 100, 32d Cong., 1st sess. (1852) pp. 136-140, 152.

Exhibit 34 Seizure in Neutral Waters (the capture of the British ship "Grange" by the French frigate "L' Embuscade" in Delware Bay), 1 *Op. A.G.* 32 (1793).

Exhibit 35 Headland, Sketch of Anacapa Island

in Santa Barbara Channel (1854), United States Coast and Geodetic Survey.

Exhibit 36 Letter from Thomas Bayard, Secretary of State, to Daniel Manning, Secretary of the Treasury, May 28, 1886, in 1 Moore, *Digest of International Law* (1906) 718-721.

Exhibit 37 S. B. Stanton, *The Behring Sea Controversy*, (1892) 52-57.

Exhibit 38 *The Washington*, 4 Moore, *International Arbitrations* (1898), 4342-4344.

Exhibit 39 J. B. Henderson, *American Diplomatic Questions* (1901), 36-37.

Exhibit 40 H. Taylor, *Treatise on International Public Law*, (1901), 137-139, 278-279.

Exhibit 41 Whaling and Sealing Arbitration, Oral Argument of the United States, *Foreign Relations of the United States*, 1902, Appendix I, p. 440.

Exhibit 42 1 Moore, *Digest of International Law*, (1906) pp. 698-713, 730-731, 734-745, 770-771, 783-787, 866-884, 926.

Exhibit 43 River and Harbor Lines, 25 *Op. A.G.* 149 (1906).

Exhibit 44 A. H. Charteris, *Claims of Territorial Jurisdiction in Wide Bays*, (1906-1907) 16 Yale Law Journal 471-496.

Exhibit 45 Corespondence between Carnegie Hero Fund Commission and the Department of State (1909), 3 Letters, Files, United States Department of State, National Archives (Reprinted in 99 Cong. Rec., Part 3, 3622-3623 (1953).

Exhibit 46 North Atlantic Coast Fisheries Arbitration, S. Doc. No. 870, 61st Cong., 3d sess. (1912) Vol. 1, Report of the Agent of the United States, pp. 18-19 (Cong. Doc. Ser. No. 5929).

Exhibit 47 North Atlantic Coast Fisheries Arbitration, S. Doc. No. 870, 61st Cong., 3d sess. (1912) Vol. 1, Award of the Tribunal and Dissenting Opinion of Dr. Drago on Question Five, pp. 92-98, 102-106 (Cong. Doc. Ser. No. 5929).

Exhibit 48 North Atlantic Coast Fisheries Arbitration, S. Doc. No. 870, 61st Cong., 3d sess. (1912) Vol. 8, Argument of the United States, p. 201 (Cong. Doc. Ser. No. 5936).

Exhibit 49 North Atlantic Coast Fisheries Arbitration, S. Doc. No. 870, 61st Cong., 3d sess. (1912) Vol. 10, Oral Argument of Charles B. Warren for the United States, pp. 1000-1001, 1012-1015, 1078-1989, 1094-1095, 1122-1126, 1201-1227 (Cong. Doc. Ser. No. 5938).

Exhibit 50 North Atlantic Coast Fisheries Ar-

bitration, S. Doc. No. 870, 61st Cong., 3d sess. (1912) Vol. 11, Oral Argument of Elihu Root for the United States, pp. 2150-2153, 2161, 2166-2169 (Cong. Doc. Ser. No. 5939).

Exhibit 51 *Position Taken By This Government in Its Diplomatic Correspondence with Respect to the Three-Mile Limit and Its Extension*, Memorandum by the Office of the Solicitor, Department of State, Nov. 30, 1921. Files, United States Department of State, National Archives.

Exhibit 52 Henry S. Fraser, *The Extent and Delimitation of Territorial Waters*, (1926) 11 Cornell L. Q. 455.

Exhibit 53 Memorandum by the Office of the Solicitor, Department of State, March 2, 1926. Files, United States Department of State, National Archives.

Exhibit 54 Letter from W. R. Castle, Jr., for the Secretary of State, to O. C. Kiep, German Charge' d' Affaires ad interim, Oct 6, 1927. United States Department of State, National Archives.

Exhibit 55 *A compilation of the Provisions of Law in Force in the United States in Regard to Territorial Waters*, Memorandum of Department of State, acocmpanying letter of Oct. 6, 1927, above. Files, United States

Department of State, National Archives.

Exhibit 56 Letter from E. F. Morgan, Acting Secretary of Commerce, to the Secretary of State [Frank B. Kellogg] Apr. 24, 1928. Files, United States Department of State, National Archives.

Exhibit 57 Letter from the Secretary of State to H. H. Bachke, Norwegian Minister (July 11, 1928). Files, United States Department of State, National Archives.

Exhibit 58 *Territorial Waters and Fishery Boundaries*, Memorandum by the Treaty Division, Department of State, Dec. 7, 1928. Files, United States Department of State, National Archives.

Exhibit 59 Memorandum by the Treaty Division, Department of State, Dec. 8, 1928. Files, United States Department of State, National Archives.

Exhibit 60 Memorandum by the Officer of the Solicitor, Department of State, Dec. 17, 1928. Files, United States Department of State, National Archives.

Exhibit 61 Memorandum by the Division of Western European Affairs, Department of State, Jan. 15, 1929. Files, United States Department of State, National Archives.

Exhibit 62 Memorandum by the Treaty Division, Department of State, Jan. 18, 1929. Files, United States Department of State, National Archives.

Exhibit 63 Memorandum by the Treaty Division, Department of State, Jan. 19, 1929. Files, United States Department of State, National Archives.

Exhibit 64 Letter from W. R. Castle, Jr., for the Secretary of State, to the Secretary of the Navy[Charles Francis Adams], Apr. 22, 1929. Files, United States Department of State, National Archives.

Exhibit 65 Letter from W. R. Castle, Jr., for the Secretary of State, to the Secretary of the Treasury [Andrew W. Mellon], Apr. 22, 1929. Files, United States Department of State, National Archives.

Exhibit 66 Letter from C. F. Adams, Secretary of the Navy, to the Secretary of State [Charles Evans Hughes], May 8, 1929. Files, United States Department of State, National Archives.

Exhibit 67 Letter from W. R. Castle, Jr., for the Secretary of State, to the Secretary of the Treasury [Andrew W. Mellon], May 13, 1929. Files, United States Department of State, National Archives.

Exhibit 68 Letter from W. R. Castle, Jr., for

the Secretary of State, to Alexis H.G.O. Lundh, Norwegian Charge' d'Affairs ad interim, July 13, 1929. Files, United States Department of State, National Archives.

Exhibit 69 League of Nations, Conference for the Codification of International Law, Bases of Discussion, Territorial Waters, Vol. 2, p. 38 (1929).

Exhibit 70 League of Nations, Conference for the Codification of International Law, Bases of Discussion, Territorial Waters, Vol. 2, p. 41 (1929).

Exhibit 71 League of Nations, Conference for the Codification of International Law, Bases of Discussion, Territorial Waters, Vol. 2, p. 44 (1929).

Exhibit 72 League of Nations, Conference for the Codification of International Law, Bases of Discussion, Vol. 2, Territorial Waters, 1929, pp. 48-51.

Exhibit 73 League of Nations, Conference for the Codification of International Law, Bases of Discussion, Territorial Waters, Vol. 2, p. 143 (1929).

Exhibit 74 League of Nations, Acts of the Conference for the Codification of International Law. Meetings of the Committees, Vol. III, Minutes of the Second Committee; Territorial Waters (C. 351 (b). M. 145 (b). 1930. V) pp. 179-180, 195-200, 205-209, 217-220.

Exhibit 75 S. W. Boggs, *Delimitation of the Territorial Sea*, 24 American Journal of International Law (1930) 541-555.

Exhibit 76 *U. S. Coast Guard Boarding Manual* (1931) 3, 15, 16.

Exhibit 77 1 Hackworth, *Digest of International Law* (1940) 625-626, 634, 643-645.

Exhibit 78 Letter from S. W. Boggs, for the Secretary of State, to R. J. Allison, Washington National Insurance Co., Feb. 20, 1941. Files, United States Department of State, National Archives.

Exhibit 79 U.S. Coast Guard Institute, *Admiralty Law Enforcement* (1943) 24-27.

Exhibit 80 Annex 42 to the British Reply, 2 *Pleadings, Oral Arguments, Documents, Fisheries Case, I.C.J.*, pp. 752-753 (1951).

Exhibit 81 British Reply, Fisheries Case, Vol. 2, Annex 42, Fig. 1, facing p. 32.

Exhibit 82 Annexes 46 and 47 to the British Reply, 2 *Pleadings, Oral Arguments, Documents, Fisheries Case, I.C.J.*, pp. 763-764 (1951).

Exhibit 83 Note from United States to Egypt, June 4, 1951, and note from the United States to Ecuador, June 7, 1951, 4 *Pleadings, Oral Arguments,*

Documents, Fisheries Case, I.C.J., pp. 603-604, (1951).

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Exhibit 93 Letter, from James E. Webb, Under Secretary of State, to J. Howard McGrath, Attorney General, November 13, 1951; Letter, from Dean Acheson, Secretary of State, to J. Howard McGrath, Attorney General, February 12, 1952. Hearings, S. Committee on Interior and Insular Affairs, S. J. Res. 13, 83rd Cong., 1st sess. (1953) pp. 460-462.

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Exhibit 96 Draft Articles on the Law of the Sea, Article 4 and Comment, Report of the Initernational Law Commission to the General Assembly Covering the Work of its Seventh Session, 2 *Yearbook of the I.L.C., 1955*, p. 35.

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Exhibit 108 Letter, from Leonard C. Meeker, Legal Adviser, Department of State, to Erwin Griswold, Solicitor General, April 8, 1969; Files, Department of Justice.

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Exhibit 121 Letter from Mr. Earl G. Harrington, for the Director, Bureau of Land Management, to Gordon Atwater, Jan. 30, 1957. Files, Department of the Interior, Bureau of Land Management, Washington, D. C.

Exhibit 122 Letter from Mr. Earl G. Harrington, for the Director, Bureau of Land

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Exhibit 123 Letter from Gordon Atwater to Edward Woozley, Director, Bureau of Land Management, Feb. 8, 1957. Files, Department of the Interior, Bureau of Land Management, Washington, D. C.

Exhibit 124 Letter from Gordon Atwater to Earl J. Harrington, Feb. 8, 1957. Files, Department of the Interior, Bureau of Land Management, Washington, D. C.

Exhibit 125 Letter from Edward Woozley, Director, Bureau of Land Management, to the Director, U.S. Coast and Geodetic Survey, February 14, 1957. Files, Department of the Interior, Bureau of Land Management, Washington, D.C.

Exhibit 126 Letter from Edward Woozley, Director, Bureau of Land Management, to Gordon Atwater, Feb. 14, 1957. Files, Dept. of the Interior, Bureau of Land Management, Washington, D.C.

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Exhibit 128 Letter from Edward Woozley, Director, Bureau of Land Management, to Gordon Atwater, Mar. 19, 1959. Files, Dept. of the Interior, Bureau of Land Management, Washington, D.C.

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Exhibit 131 Mississippi River Commission, Corps of Engineers, U.S. Army, *Stages and Discharges Mississippi River and Its Outlets and Tributaries*, 1940, p. 51.

Exhibit 132 Mississippi River Commission, Corps of Engineers, U.S. Army, *Stages and Discharges Mississippi River and Its Outlets and Tributaries*, 1946, p. 49, 229 and 230.

Exhibit 133 Mississippi River Commission, Corps of Engineers, U.S. Army, *Stages and*

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Exhibit 134 Mississippi River Commission, Corps of Engineers, U.S. Army, *Stages and Discharges Mississippi River and Its Outlets and Tributaries*, 1949, p. 46.

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Exhibit 137 Mississippi River Commission, Corps of Engineers, U. S. Army, *Stages and Discharges Mississippi River and Its Outlets and Tributaries*, 1957, p. 48.

Exhibit 138 Mississippi River Commission, Corps of Engineers, U. S. Army *Stages and Discharges Mississippi River and Its Outlets and Tributaries*, 1958, p. 47

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Exhibit 140 Mississippi River Commission, Corps of Engineers, U. S. Army, *Stages and Discharges Mississippi River and Its Tributaries*, 1960, p. 53.

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Discharges Mississippi River and Its Outlets and Tributaries, 1961, p. 53.

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Exhibit 148 Affidavit of Sam Sutton, Chief, Reproduction Branch, U. S. Army Corps of Engineers, New Orleans District, Aug. 17, 1970.

Exhibit 149 U. S. Army, Corps of Engineers Photographs 8468-3.

Exhibit 150 U. S. Army, Corps of Engineers Photograph 11872-5.

Exhibit 151 U. S. Army, Corps of Engineers Photograph 11872-20.

Exhibit 152 U. S. Army, Corps of Engineers Photograph 11880-1.

Exhibit 153 U. S. Army, Corps of Engineers Photograph 7833-27.

Exhibit 154 U. S. Army, Corps of Engineers Photograph 11872-19.

Exhibit 155 Photograph, Frame B: South Pass Entrance looking east along the hook, June 9, 1962. Woods Hole Oceanographic Institution Data Library, Woods Hole, Mass.

Exhibit 156 Photograph, Frame C: The hook at South Pass Entrance, June 9, 1962. Woods Hole Oceanagraphic Institution Data Library, Woods Hole, Mass.

Exhibit 157 United States Department of the Interior, Noncompetitive Oil and Gas Lease, Serial Number BLM A-040049. Files, United States Department of the Interior, Bureau of Land Management, Washington, D. C.

Exhibit 158 Aerial Photomosaic, Pass a Loutre. Files, Liskow and Lewis, 225 Baronne St., New Orleans, Louisiana.

Exhibit 159 Letter dated March 20, 1963, from Austin W. Lewis to Archibald Cox, Solicitor General. Files Department of Justice.

Exhibit 160 Photographs Nos. 1, 2, 5, 6, 7, 10, 11, 12, 14 15 and 17 taken by S. V. Asbury Jr., May 31, 1960. Files, Department of Justice, Washington, D. C.

Exhibit 160A Reproduction of part of Map 2 of 8, showing location of Asbury photographs.

Exhibit 160B Original contact prints of Asbury photographs (introduced for inspection and withdrawn, subject to re-examination if necessary).

Exhibit 161 Affidavit of Mr. Jonathan I. Charney, Attorney, Department of Justice, Washington, D. C., August 31, 1971.

Exhibit 162 Photographs A and B taken by Jonathan I. Charney, June 20, 1970.

Exhibit 163 Photograph, Frame A: Southeast Pass looking north from the Gulf of Mexico, June 9, 1962. Woods Hole Oceanographic Institution Data Library, Woods Hole, Mass.

Exhibit 164 A portion of U.S.C. & G.S. Topographic Survey Number 3630 (1916) (mounted).

Exhibit 164-A Same, unmounted (originally numbered 164; renumbered 164A, January 26, 1971).

Exhibit 165 A portion of U.S.C. & G.S. Hydrographic Survey Number 6637 (1946) (mounted).

Exhibit 165A Same, unmounted (originally numbered 165; renumbered 165A, January 26, 1971).

Exhibit 166 Permit issued May 21, 1956, to Gulf Refining Company by the Corps of Engineers, U. S. Army. Files, United States Army Engineer District, New Orleans, Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana.

Exhibit 167 Letter from Lt. Col. R. G. Hodes to Gulf Refining Company, May 22, 1956. Files, Corps of Engineers, U.S. Army, United States Army Engineer District, New Orleans, Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana.

Exhibit 168 Letter, from J. A. Austin, District Service Manager, Gulf Oil Corporation, to U.S. Army District Engineer. Files, Gulf Oil Corp., P.O. Box 61590, New Orleans, Louisiana.

Exhibit 169 Letter, from J. A. Austin to U.S. Army District Engineer, July 6, 1959. Files, Gulf Oil Corp., P.O. Box 61590, New Orleans, Louisiana 70160.

Exhibit 170 Bill from Circle Dredging Co., Inc.,

to Gulf Oil Corporation, August 20, 1959. Files, Gulf Oil Corp., P. O. Box 61590 New Orleans, Louisiana 70160.

Exhibit 171 Sheets 1A and 1 of 14 to accompany Gulf Oil Corp. application dated March 28, 1956. Files, Gulf Oil Corp., P.O. Box 61590, New Orleans, Louisiana 70160.

Exhibit 172 Letter, from J. A. Austin to U. S. Army, District Engineer, September 28, 1959. Files, Gulf Oil Corp., P.O. Box 61590, New Orleans, Louisiana 70160.

Exhibit 173 Letter, from J. A. Austin to U. S. Army District Engineer, September 29, 1959. Files, Gulf Oil Corp., P.O. Box 61590, New Orleans, Louisiana 70160.

Exhibit 174 Letter, from J. A. Austin to U. S. Army District Engineer, December 3, 1959. Files, Gulf Oil Corp., P.O. Box 61590, New Orleans, Louisiana 70160.

Exhibit 175 Letter from J. A. Austin to U. S. Army District Engineer, December 21, 1959. Files, Gulf Oil Corp., P.O. Box 61590, New Orleans, Louisiana 70160.

Exhibit 176 Photograph, Frame D: Pass Tante Phine Entrance viewed from the west, June 9, 1962. Woods Hole Oceanographic Institution Data Library, Woods Hole, Mass.

Exhibit 177 Photograph, Frame E: Pass Tante Phine entrance viewed from the west, June 9, 1962. Woods Hole, Oceanographic Institution Data Library, Woods Hole, Mass.

Exhibit 177 Photograph, Frame E: Pass Tante Phine entrance viewed from the west, June 9, 1962. Woods Hole Oceanographic Institution Data Library, Woods Hole, Mass.

Exhibit 178 Photograph, Frame F: Dredged area north of Pass Tante Phine Entrance, June 9, 1962. Woods Hole Oceanographic Institution Data Library, Woods Hole, Mass. 02543.

Exhibit 179 Hydrographic Survey, Pass Tante Phine Spoil Bank, August 4, 1966. U.S. Corps of Engineers, New Orleans, District.

Exhibit 180 A Portion of U.S.C. & G.S. Hydrographic Survey Number 6172 (1936). U.S. Coast and Geodetic Survey.

Exhibit 181 Department of Transportation, United States Coast Guard, *Light List, Vol. II, Atlantic and Gulf Coast of the United States* (1968) pp. 247-48.

Exhibit 182 Office Memorandum, from Lt. Robert C. Phillips, USCG, to Chief, Aids to Navigation Section, July 3, 1953. Files, United States Coast Guard, 8th District.

Exhibit 183 Letter from Jules Minnich, Terrebonne-LaFourche Boatmen's Association, to the Commandant, U.S.C.G., 8th District, July 7, 1953. Files, United States Coast Guard, 8th District.

Exhibit 184 Project Report for Advance Program of Acquisition, Construction and Improvement, dated October 1, 1953. Files, United States Coast Guard, 8th District.

Exhibit 185 Aids to Navigation Operation Request, dated December 8, 1953. Files, United States Coast Guard, 8th District.

Exhibit 186 Letter from Mr. Ralph B. Bisland, Secretary Treasurer, Terrebonne Parish Police Jury, to Commander Coast Guard, Eighth Naval District, May 29, 1957. Files, United States Coast Guard, 8th District.

Exhibit 187 Affidavit of Jonathan I. Charney, Attorney, Department of Justice, Washington, D. C.

Exhibit 188 Photographs C and D taken by Jonathan I. Charney, June 20 and 22, 1970.

Exhibit 189 Photographs E and F taken by Jonathan I. Charney, June 20, 1970.

Exhibit 190 Affidavit of Mrs. D. T. Atkinson.

Exhibit 190A Photograph Roll 5-A No. 7 taken by John R. May, Geographer, Geology

Branch, Waterways Experiment Station, Vicksburg, Mississippi, June 22, 1970.

Exhibit 191 A portion of U.S.C. & G.S. Hydrographic Survey Number 5537 (1934) (mounted).

Exhibit 191A Same, unmounted (originally numbered 191; renumbered 191A, January 26, 1971).

Exhibit 192 Affidavit of Jonathan I. Charney, Department of Justice, Washington, D. C. 20530.

Exhibit 193 Photograph G taken by Joanthan I. Charney.

Exhibit 194 Photograph, Frame G: Point au Fer viewed from the west, June 10, 1962. Woods Hole Oceanographic Institution Data Library, Woods Hole, Mass. 02543.

Exhibit 195 Executive Order, Reservation of Shell Keys for a Light House, July 9, 1855. National Archives, Washington, D.C.

Exhibit 196 Executive Order, Shell Keys Reservation, August 17, 1907. National Archives, Washington, D. C.

Exhibit 197 Photograph, Frame H: Southern Shore of Marsh Island, June 10, 1962. Woods Hole Oceanographic Institution Data Library, Woods Hole, Mass. 02543.

Exhibit 198 Photograph, Frame I: Southern Shore of Marsh Island, June 10, 1962. Woods Hole Oceanographic Institution Data Library, Woods Hole, Mass. 02543.

Exhibit 199 Photograph 66-HC-1793, Western Coast of Louisiana, Gemini Flight 9, Magazine 9, Frame 40, Height- 160 nautical miles, September 14, 1966, National Aeronautics Service Administration.

Exhibit 200 Report to Bureau of Land Management, Mean Low Water Line Survey for Nine Specific Areas, Mississippi River Delta Louisiana, Mississippi River Delta Louisiana, 1970 (In ten volumes). U. S. Coast and Geodetic Survey.

Exhibit 201 Maps Illustrative of Issues. United States Department of Justice.

Exhibit 202 *Geological Observations on the Origin, Nature and Distribution of Mudlumps, Barrier Islands and Oyster Reefs of Coastal Louisiana*, by C. R. Kolb and R. T. Saucier (August 1970).

Exhibit 203 *Appendix A of Geological Observations on the Origin, Nature and Distribution of Mudlumps, Barrier Islands and Oyster Reefs of Coastal Louisiana*, by C. R. Kolb and R. T. Saucier (August 1970).

Exhibit 204 Affidavit of Mr. R. J. Simon.

Exhibit 205 Affidavit of Mr. Ellwood Ott.

Exhibit 206 Affidavit of Mr. E. T. Oliver.

Exhibit 207 Affidavit of Mr. Harland R. Cravat.

Exhibit 208 Affidavit of Mr. Harland R. Cravat.

Exhibit 209 Affidavit of Mr. Erwin L. Methe.

Exhibit 210 Affidavit of Mr. Erwin L. Methe.

Exhibit 211 Affidavit of Mr. D. T. Atkinson.

Exhibit 212 Affidavit of Mr. Paul W. Scoggan.

Exhibit 213 Aerial Photographs Nos.: INO-1-204, INO-1-154, INO-1-158

Exhibit 214 Aerial Photographs Nos.: 25, 24, 23, 22, 21, 20, of V311RW M1063

Exhibit 215 Aerial Photographs Nos.: M-16-90A-4, M-16-90-70, M-16-90A-2

Exhibit 216 Aerial Photographs Nos.: M-17-89-42, M-17-88-3

Exhibit 217 Aerial Photographs Nos.: 724-190 - 724-194

Exhibit 218 Aerial Photographs Nos.: 724-204, 724-203, 724-202, 724-201, 724-200

Exhibit 219 Aerial Photographs Nos.: 24-104 - 24-107

Exhibit 220 Aerial Photographs Nos.: 24-116, 24-115, 24-114

Exhibit 221 Aerial Photographs Nos.: 927-932

Exhibit 222 Aerial Photographs Nos.: 591-596

Exhibit 223 Aerial Photographs Nos.: 547X2-551X2

Exhibit 224 Aerial Photographs Nos.: 325X3, 326X3, 343X3, 342X3, 341X3, 355X3, 356X3

Exhibit 225 Aerial Photographs Nos.: L6947 - L6952

Exhibit 226 Aerial Photographs Nos.: 7-59 142 - 7-59 145

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Exhibit 228 Aerial Photographs Nos.: 9-60 61, 9-60 62

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Exhibit 230 Aerial Photographs Nos.: 6052-7-90 - 6052-7-92

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Exhibit 233 Aerial Photographs Nos.: 57-171, 57-172, 57-174, 57-173

Exhibit 234 Aerial Photographs Nos.: INO-1-94, INO-1-88

Exhibit 235 Aerial Photographs Nos.: INO-2-46, INO-2-3

Exhibit 236 Aerial Photographs Nos.: R182-59-A-6, R182-59-A-5, R182-59-A-4, R182-59A-3, R182-59-A-2

Exhibit 237 Aerial Photographs Nos.: R182-59-B-41 - R182-59-B-43

Exhibit 238 Aerial Photographs Nos.: M21-93-66 and M21-92-41 - M21-92-45

Exhibit 239 Aerial Photographs Nos.: 289, 288, 287, 286, 285, 284

Exhibit 240 Aerial Photographs Nos.: 578 - 580

Exhibit 241 Aerial Photographs Nos.: 914, 915

Exhibit 242 Aerial Photographs Nos.: 27-27, 24-186, 24-190, 24-141

Exhibit 243 Aerial Photographs Nos.: 705 33E 2619, 705 33E 2618, 705 33E 2617

Exhibit 244 Aerial Photographs Nos.: 724-83, 724-84, 724-85

Exhibit 245 Aerial Photographs Nos.: 724-95 - 724-97

Exhibit 246 Aerial Photographs Nos.: 217X3, 218X3, 265X3, 264X3, 269X3, 314X3

Exhibit 247 Aerial Photographs Nos.: L6967, L6966, L6965, L6964

Exhibit 248 Aerial Photographs Nos.: 052-5-68 - 6052-5-70

Exhibit 249 Aerial Photographs Nos.: 60-37, 60-35, 60-36, 60-4, 60-3, 60-2, 60-1

Exhibit 250 Aerial Photographs Nos.: L8287R, L8286R, L8285R, L8284R, L8283R, L8282R, L8281R, L8280R, L8279R, E4982, E4981, E4980, E4979, E4978, E4977, E4976, E4975, L8188R, L8187R, L8186R, L8185R, L8184R, L8183R, L8182R, L8181R, E4879,

E4878, E4877, E4876, E4875, E4874, E4873, E4872.

Exhibit 251 Aerial Photographs Nos.: L8091R, L8090R, L8089R, L8088R, L8087R, L8086R, L8085R, L8084R, L8083R. E4780, E4779, E4778, E4777, E4776, E4775, E4774, E4773, E4772, L8323R, L8322R, L8321R, L8320R, L8319R, L8318R, L8317R, L8316R, E5019, E5018, E5017, E5016, E5015, E5014, E5013, E5012.

Exhibit 252 Aerial Photographs Nos.: E5035 - E5049, L8339R - L8353R

Exhibit 253 Coastline Undisputed

Exhibit 254 Coastline Disputed

Exhibit 254A Coastline Disputed Revised December 10, 1970

Exhibit 255 Undisputed Offshore Line

Exhibit 256 Offshore Line Disputed

Exhibit 256A Offshore Line Disputed Revised December 10, 1970

Exhibit 257 Sheet L36, Photomosaic, Ammann International, San Antonio, Texas.

Exhibit 258 Sheet L37, Photomosaic, Ammann International, San Antonio, Texas.

Exhibit 259 Uncontrolled mosaic prepared from aerial photos flown Dec. 1968, Photo 71, File No. 8-3, Corps of Engineers, U.S. Army Engineer District, New Orleans.

Exhibit 260 Uncontrolled mosaic prepared from aerial photos flown Dec. 1968, and March 1969, Photo 83, File No. 8-3, Corps of Engineers, U.S. Army Engineer District, New Orleans.

Exhibit 261 Affidavit of Donald B. Wilson

Exhibit 262 Affidavit of Harland T. Cravat, U.S.C. & G.S.

Exhibit 263 Affidavit of William M. Dunkle, Jr., Woods Hole Oceanographic Institute

HEARINGS IN NEW ORLEANS

Exhibit 264A Sketch of an eroding bay, by Leo Bouchez.

Exhibit 265 Sketch of average penetration of a bay, by Leo Bouchez.

Exhibit 266 Bureau of Land Management leasing map, Louisiana outer continental shelf, showing leases maintained under section 6 of the Outer Continental Shelf Lands Act.

Exhibit 267 Map showing route of coast flight by Special Master and counsel, October 18, 1970 (two sheets).

Exhibit 268A Bennett G. Jones deposition, vol. 1.

Exhibit 268B Bennett G. Jones deposition, vol. 2.

Exhibit 269 Gordon Atwater deposition.

Exhibit 270 Newton Beauvais deposition.

Exhibit 271 Sketch of sine curve wave and mud-lump (accompanying cross-examination of Curtis L. Buttorff).

Exhibit 272 Sketch of Mudlump 90, by Curtis L. Buttorff.

Exhibit 273 Letter of April 29, 1959, from Mr. Austin, Gulf Oil Company to the Corps of Engineers, U.S. Army.

Exhibit 274 Letter of June 11, 1964, from Mr. Price, Gulf Oil Company, to the Corps of Engineers, U.S. Army.

Exhibit 275 Bureau of Land Management records of leases maintained under section 6 of the Outer Continental Shelf Lands Act.

Exhibit 276 Report on Wind and Weather Conditions, by Arthur Cooperman.

Exhibit 277 Map of Shell Keys (Copy of No. 17 in U.S. Exh. No. 201) marked by Alexander Melamid to delimit the mainland.

Exhibit 278A Map of Isle Dernier (copy of No. 14 in U.S. Exh. No. 201) showing route of David Morgan - Frederick Ellis trip, September 5, 1970.

Exhibit 278B Xerox copy of part of Map 19 of 41, showing location of David Morgan photo No. 1.

Exhibit 278C Same, photo No. 2

Exhibit 278D Same, photo No. 3

Exhibit 278E Xerox copy of part of Map 19 of 41, showing location of David Morgan photo No. 4.

Exhibit 278F Same, photo No. 5.

Exhibit 278G Same, photo No. 6.

Exhibit 279 Notes by Mr. Francis Zimmerman.

HEARINGS IN WASHINGTON

Exhibit 280

1. Letter, October 24, 1969, to Victor Sachse from George Swarth, submitting three informal survey interrogatories.
2. Letter, February 24, 1970, to Frederick W. Ellis from Jonathan Charney, enclosing transcript of Rhode Island Conference of 1966.
3. Letter, April 28, 1970, to Louis F. Claiborne from Frederick Ellis, enclosing their replies to our three survey interrogatories of October 24, 1969.

Exhibit 281

1. Letter, January 20, 1970, to Victor Sachse from George Swarth, submitting interrogatories to the State of Louisiana.
2. Letter, May 7, 1970, to Walter Armstrong from Frederick Ellis, enclosing Preliminary Response to the Informal Interrogatories Addressed by the United States to the State of Louisiana on January 20, 1970.
3. Letter, August 19, 1970, to Peter Strauss from Frederick Ellis enclosing exhibit "Bucket Bend Bay" to satisfy interrogatories of January 20, 1970.

Exhibit 282

1. Letter, April 8, 1970, to Victor Sachse from Jonathan Charney, requesting minutes of the Louisiana State Mineral Board on the subject of mean low-water line survey from 1956-1961.
2. Letter, April 21, 1970, to Jonathan Charney from Victor Sachse, advising State Mineral Board is gathering the material requested.
3. Letter, August 7, 1970, to Jonathan Charney from Victor Sachse, advising he had felt the request was satisfied but inform him of what we desire and he will again request if from the State Mineral Board.
4. Letter, August 17, 1970, to Victor Sachse from George Swarth, advising him of the materials we want from the State Mineral Board.

Exhibit 283

1. Letter, July 1, 1970, to Victor Sachse from George Swarth, submitting First Formal Interrogatories to the Defendant, State of Louisiana and Request for Production of Documents Number One.
2. Answers and Objections of the Defendant, State of Louisiana, to the First Formal Interrogatories and Request for Production of

Documents Number One of the United States, dated Aug. 5, 1970.

Exhibit 284

1. Letter, August 14, 1970, to Victor Sachse from George Swarth, submitting United States First Formal Request for Admissions.
2. Letter, September 15, 1970, to Peter Strauss from Frederick Ellis, enclosing the State of Louisiana's Answer to First Formal Request for Admissions.

Exhibit 285

1. United States Second Formal Request for Admissions, dated August 19, 1970.
2. Response to United States Second Formal Request for Admissions, dated September 18, 1970.

Exhibit 286

Second Formal Interrogatories to the Defendant, State of Louisiana, dated August 19, 1970.

Exhibit 287

1. United States Fourth Formal Request for Admission, dated September 1, 1970.
2. Response to United States Fourth Formal Request for Admissions, dated September 18, 1970.

Exhibit 288

Certified copy of Diplomatic Note from the Department of State to the Charge d'Affaires ad interim of Germany, sent October 6, 1927, Files, United States Department of State.

Exhibit 289 Certified copy of a compilation of the provisions of law in force in the United States in regard to territorial waters, Files, United States Department of State.

Exhibit 290 Certified copy of a Note sent July 11, 1928, from the Department of State to the Minister of Norway, Files, United States Department of State.

Exhibit 291 Certified copy of an Inter Bureau memorandum dated December 7, 1928, Files, United States Department of State.

Exhibit 292 Certified copy of a Diplomatic Note from the Department of State to the Charge d'Affaires ad interim of Norway sent July 13, 1929, Files, United States Department of State.

Exhibit 293 Certified copy of an Aide-Memoire from the Department of State to Norwegian Embassy, sent September 29, 1949, Files, United States Department of State.

Exhibit 294 Certified copy of a Diplomatic Note from the Ambassador of Japan to the Secretary of State delivered on May 3, 1962, Files, United States Department of State.

Exhibit 295 Hawkins, Pleas of the Crown, 6th ed., 1787, p. 73.

Exhibit 296 *Hale's DeJure Maris, Hargrave's Law Tracts*, pp. 10, 11.

Exhibit 297 *Coke's Institutes*, Part 4, 1797, pp. 135, 140-141.

Exhibit 298 East, Pleas of the Crown, Vol. II, 1803, pp. 802-804.

Exhibit 299 Message of the President of the United States, Communicating the Proceedings of the Commissioners for the Adjustment of Claims under the Convention with Great Britain of February 8, 1853 (Schooner Washington), August 11, 1856, S. Exec. Doc. No. 103, 34th Cong., 1st sess. [Cong. Doc. Ser. No. 824], pp. 170-186.

Exhibit 300 *Regina* v. *Cunningham*, Bell's Crown Cases, 1858-1860, pp. 72-86.

Exhibit 301 Woolsey, *Introduction to the Study of International Law* 6th ed., (1899), pp. 76-77.

Exhibit 302 Gould, *A Treatise on the Law of Waters, Including Riparian Rights, and Public and Private Rights in Waters Tidal and Inland* (3rd ed., 1900), pp. 14-16.

Exhibit 303 Gregory, *The Recent Controversy as to the British Jurisdiction Over Foreign Fishermen More Than Three Miles from Shore: Nortensen v. Peters*, 1 Am. Pol. Sci. Rev. (1906-1907), pp. 410-437.

Exhibit 304 Fulton, *Sovereignty of the Sea*, pp. 188, 618-621, 696-698 (1911).

Exhibit 305 Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, Vol. I, pp. 251-267 (1922).

Exhibit 306 Hurst, *The Territoriality of Bays*, III British Yearbook of International Law, 1922-1923, pp. 42-54.

Exhibit 307 Hurst, *Whose is the Bed of the Sea?*, IV British Yearbook of International Law (1923-1924), pp. 34-43.

Exhibit 308 Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* (1927), pp. 13-18 and 355-362.

Exhibit 309 League of Nations, Acts of the Conference for the Codification of International Law, Meetings of the Committees, Vol. III (1930), pp. 218-219.

Exhibit 310 Hackworth, *Digest of International Law*, Vol. II (1941), pp. 679-680.

Exhibit 311 Vallat, Note, XXIII the British Yearbook of International Law, 1946, pp. vi, 333-338.

Exhibit 312 Lauterpacht, *Sovereignty Over Submarine Areas*, XXVII B.Y.B.I.L. (1950), pp. 376-433.

Exhibit 313 Judgment, *Fisheries Case*, I.C.J. Reports (1951), p. 116 at 163-166.

Exhibit 314 Yearbook of the International Law Commission, 1952, Vol. I, pp. 172-173, 177-178, 188-190.

Exhibit 315 Francois, *Addendum to the Second Report of the Regime of the Territorial Sea*, U.N. Doc. A/CN.4/61/Add.1 (18 May 1953).

Exhibit 316 Yearbook of the International Law Commission, 1954, Vol. I, pp. 65, 9094, Vol. II, pp. 155-156.

Exhibit 317 Yearbook of the International Law Commission, 1956, Vol. I pp. 73-74, 205-216, 219-221, Vol. II, pp. 36-38.

Exhibit 318 Yearbook of the International Law Commission, 1956, Vol. I pp. 190-193, Vol. II, pp. 268-270.

Exhibit 319 United Nations Conference on the Law of the Sea, Official Records, Vol. III, A CONF. 13/39, 1958, pp. 144-146, 161-162, Annexes pp. 227-228, 240-242.

Exhibit 320 Status of Ratification of 1958 Convention on the Territorial Sea, 89 Cong. Rec. Part 3 (1965), pp. 10312-10313.

Exhibit 321 S. 1954, a bill to protect coastal fishery and other resources by implementing the Convention on the Territorial Sea and the Contiguous Zone, 89th Cong., 1st sess., May 12, 1965.

Exhibit 322 Judgment, North Sea Continental Shelf, I.C.J. Reports, 1969, pp. 33-36.

Exhibit 323 Letter, March 1, 1966, to Archibald Cox, Special Assistant to the U.S. Attorney General, from Paul M. Hebert,

Special Counsel to the Attorney General of Louisiana, re April 1961 Memorandum of the U.S. Coast and Geodetic Survey Presenting Recommendations on Delineation of Louisiana Coastline. Source: U.S. Department of Justice.

Exhibit 324 Letter, March 4, 1966, to Paul M. Hebert from Archibald Cox, in response to Mr. Hebert's letter of March 1, 1966. Source: U. S. Department of Justice.

Exhibit 325 Letter, March 16, 1966, to Paul M. Hebert from Archibald Cox. Source: U.S. Department of Justice.

Exhibit 326 Letter March 22, 1966, to Paul M. Hebert from George S. Swarth, Attorney, Land and Natural Resources Division, U.S. Department of Justice, transmitting Accession No. 62512 subject to terms of March 16, 1966 letter. Source: U.S. Department of Justice.

Exhibit 327 Letter, March 28, 1966, to Dean Paul M. Hebert from Archibald Cox acknowledging his letter of March 22, 1966. Source: U.S. Department of Justice.

Exhibit 328

1. Certification dated December 17, 1970, by Nancy E. Pearl, Consul of the United States of America, certifying annexed copy of Note No. 1639 of December 2, 1970,

is a true copy of the copy filed in that Embassy.

2. Certified copy of Note No. 1639 dated December 2, 1970, with enclosed letter, dated November 10, 1970, to John R. Stevenson, the Legal Adviser of the Department of State, from Shiro Kashiwa, Assistant Attorney General, U.S. Department of Justice.

Exhibit 329

1. Certification dated December 17, 1970, by Nancy E. Pearl, Consul of the United States, certifying annexed copy of Note No. 513158 of December 16, 1970, is true copy of original.
2. Certified copy of Note No. 513158 of December 16, 1970.

Exhibit 330 Department of State Translation of Note No. 513158.

Exhibit 331 Letter, November 20, 1970, to Shiro Kashiwa, from John R. Stevenson. Source: U.S. Department of Justice.

Exhibit 332

1. Letter, December 10, 1970, from Frederick Ellis to Peter Strauss, transmitting Louisiana Answers to U.S. Second Formal Interrogatories to the State of Louisiana.
2. To answers to U.S. Second Formal Interrogatories to the State of Louisiana.

Exhibit 333 Shirley and Ragsdale, eds., *Deltas in*

Their Geologic Framework (Houston Geological Society) pp. 232-251.

Exhibit 334 United States Tariff Commission Maps prepared for the purpose of facilitating the conduct of an investigation under S. Res. 314, 71st Cong., 2d Sess. (1930).

Exhibit 335 Act No. 145, Louisiana Acts, 1942, pp. 483-495.

Exhibit 336 Act No. 385, Louisiana Acts, 1948, pp. 1040-1048.

Exhibit 337 Act No. 386, Louisiana Acts, 1948, pp. 1049-1071.

Exhibit 338 Portion of U.S.C. & G.S. Chart Number 1272, all editions and revised editions from the 9th revised edition. March 28, 1949, through the 25th edition, August 15, 1970.

Exhibit 339 Documents relating to establishment and discontinuance of navigational aids at Pass Tante Phine by Shell Oil Co., Files, U.S. Coast Guard, Eighth District, New Orleans, Louisiana.

Exhibit 340 Naval Oceanographic Office, Weekly Notice to Mariners, 44/62 and 34/66.

Exhibit 341 Letter from Philip B. Perlman, Solicitor General, to Bolivar E. Kemp, Jr., Attorney General of Louisiana, March 16, 1951, Department of Justice.

Exhibit 342 *Louisiana* v. *Dardar*, Opinion, November 8, 1970, Clerk of the Supreme Court of Louisiana.

Exhibit 343 Procedures for the Creation of a Boundary for the Maritime Zone Between Mexico and the United States in the Gulf of Mexico, Department of State.

Exhibit 344 Commander R. L. Swanson, National Oceanic and Atmospheric Administration, Report on Tidal Data Mississippi River Delta Mapping Program, (December 1970).

Exhibit 345 Data prepared by Mr. Meade, Chief, Triangulations Branch, Geodesy Division NOS, NOAA.

Exhibit 346 Wind and Weather Conditions in the Mississippi River Delta Regions, Supplemental Report, December 17, 1970, prepared by Arthur I. Cooperman.

Exhibit 347 Map of a Military Reconnaissance and Survey of the approaches to New Orleans from the Gulf of Mexico between the Mississippi and Atchafalaya Rivers. Made under the direction of Capt. Geo. W. Hughes (1842).

Exhibit 348 Chart of the Gulf of Mexico and Windward Passages including the Islands of Cuba, Haiti, Jamaica, Puerto Rico, and the Bahamas. Compiled principally from the Surveys made by order of the British, Spanish, and United States Governments.

Published by James Imray and Son. (1865).

Exhibit 349 Measurement of the area between North Pass and Dead Women Pass (Bucket Bend Bay).

Exhibit 350 Measurement of the areas adjacent to Pass a Loutre, Southeast Pass, and South Pass.

Exhibit 351 East Bay Closing Lines illustrating the application of the Boggs formula to the closing lines described in Louisiana Exhibit 23A.

Exhibit 352 East Bay Closing Lines illustrating the application of the Boggs formula to the closing lines described in Louisiana Exhibit 197.

Exhibit 353 East Bay Closing Lines illustrating the application of the Boggs formula to the closing lines described in Louisiana Exhibit 180.

Exhibit 354 Measurement of the Caminada-Barataria Bay area.

Exhibit 355 Measurement of the Caillou Bay area.

Exhibit 355A Replacement for U.S. Exhibit No. 355 (measurement of Caillou Bay area), with corrected bar scale.

Exhibit 356 Measurement of the Point au Fer and Shell Keys area.

Exhibit 357 Certified copy of a portion of U.S.C. & G.S. Chart No. 1272, 9th ed., revised May 18, 1953, showing East Bay.

Exhibit 358 Certified copy of a portion of U.S.C. & G.S. Chart No. 1272, 9th ed., revised July 26, 1954, showing East Bay.

Exhibit 359 Certified copy of a portion of "Map of a Military Reconnaissance and Survey of the Approaches to New Orleans from the Gulf of Mexico between the Mississippi and Atchafalaya Rivers. Made under the direction of Capt. Geo. W. Hughes (1842)," showing Caillou Boca.

Exhibit 360 Certified copy of "Map of a Military Reconnaissance and Survey of the Approaches to New Orleans from the Gulf of Mexico between the Mississippi and Atchafalaya Rivers. Made under the direction of Capt. Geo. W. Hughes (1842)."

Exhibit 361 Composite of U.S.C. & G.S. Chart No. 1116, 22d ed., May 16, 1970, and part of U.S.C. & G.S. Chart No. 1115, ed. July 4, 1970.

Exhibit 362 U.S.C. & G.S. Chart No. 1273, 25th ed., August 15, 1970.

Exhibit 363 U.S.C. & G.S. Chart No. 1273, 12th ed., August 15, 1970.

Exhibit 364 U.S.C. & G.S. Chart No. 1050, 11th ed., October 3, 1970.

Exhibit 365 Certified copy of letter dated April

30, 1962, to Archibald Cox, Solicitor General and Attorney General Jack P. F. Gremillion of Louisiana, from appointed Members of the Joint Committee, Messrs. Swarth, Clement, Gumm, Atwater, Hayne, and Wilkinson, submitting its report.

Exhibit 366 Certified copy of a letter dated October 27, 1961, to Solicitor General Archibald Cox from Jack P. F. Gremillion, Attorney General of Louisiana, enclosing recent news article and press release issued thereafter.

Exhibit 367 Affidavit of Donald J. Simon, January 6, 1971.

Exhibit 368 Copy of part of Map 8 of 8, marked by James F. Richardson to show location of Shell Oil Co. navigational buoys at Pass Tante Phine.

Exhibit 369 Copy of part of U.S.C. & G.S. Chart No. 1272 (9/17/56) showing location of areas designated "6", "7", and "8" in East Bay and at South Pass.

Exhibit 370 Copy of parts of Maps 4 and 5 of 8, showing location of areas designated "6", "7", and "8" in East Bay and at South Pass.

Exhibit 371 Copy of part of U.S.C. & G.S. Chart No. 1272 (9/17/56) showing location of areas designated "3" and "9" near Pass du Bois and Tiger Pass.

Exhibit 372 Copy of parts of Maps 7 and 8 of 8, showing location of areas designated "3" and "9" near Pass du Bois and Tiger Pass.

Exhibit 373 Copy of part of U.S.C. & G.S. Hydrographic Survey No. 5824, January - May, 1935, showing Point au Fer and nearby shell reefs.

Exhibit 374 Set of 54 maps accompanying the Report of the Determination of the Contact Line of Mean Low Water of the Gulf of Mexico with the Mainland and Adjacent Islands of the State of Louisiana, dated December 20, 1961, submitted by committees appointed for that purpose. ("Committee Maps," designated 1 through 41 of 41, 1 through 8 of 8, and 1 through 5 of 5.)

Exhibit 375 Copy of parts of Maps 7 and 8 of 8 (vicinity of Pass du Bois and Tiger Pass).

Exhibit 376 List of publications by Dr. Charles R. Kolb.

Exhibit 377A Black-and-white copy of Tariff Commission map, on base U.S.C. & G.S. Chart No. 1115, for use in Customs District 19-20.

Exhibit 377B Black-and-white copy of Tariff Commission map, on base U.S.C. & G.S. Chart No. 1116, for use in Customs District 19-20.

Exhibit 378	List of publications by Dr. Roger T. Saucier.
Exhibit 379	Reduced scale, black-and-white composite of Committee Maps, Point au Fer to Shell Keys.
Exhibit 380	List of birdfoot deltas.
Exhibit 381	List of publications by Mr. Buford K. Meade.
Exhibit 382	Copy of page 107, League of Nations Acts of the Conference for the Codification of International Law (1930): Meetings of the Committees, Vol. III, Minutes of the Second Committee: Territorial Waters (L.N. Doc. No. C.351 (b). M. 145 (b). 1930.V.)
Exhibit 383	Copy of Document No. 19, League of Nations Conference for the Codification of International Law (1930).
Exhibit 384	United States coastline description, revised January 25, 1971.
Exhibit 385	U.S.C. & G.S. Chart No. 1274, June 6, 1970, revised through Notice to Mariners 23/70 (mounted).
Exhibit 386	U.S.C. & G.S. Chart No. 1275, June 27, 1970, revised through Notice to Mariners 26/70 (mounted).
Exhibit 387	U.S.C. & G.S. Chart No. 1276, February 14, 1970, revised through Notice to Mariners 7/70 (mounted).
Exhibit 388	U.S.C. & G.S. Chart No. 1277, July

	4, 1970, revised through Notice to Mariners 27/70.
Exhibit 389	Set of 54 Committee Maps, at reduced scale, showing the United States coastline contention.
Exhibit 389A	Three mile arc templates to accompany U.S. Exhibit 389.
Exhibit 390	Louisiana's Response to the United States Fifth Formal Request for Admissions.
Exhibit 391	Louisiana's Response to the United States Sixth Formal Request for Admissions.
Exhibit 392	Louisiana's Response to the United States Third Formal Interrogatories.
Exhibit 393	Sketch by Dr. Robert D. Hodgson, illustrating the 45° test for headlands.
Exhibit 394	Sketch illustrating alternative inner and outer headlands.
Exhibit 395	Sketch illustrating rounded headlands and a circular bay.
Exhibit 396	Sketch by Dr. Robert D. Hodgson illustrating application of the 45° test.
Exhibit 397	Sketch of a headland not associated with a bay.
Exhibit 398	Sketch by Dr. Robert D. Hodgson, illustrating selection of the entrance point on a rounded headland by use

of the bisector of the angle between lines projecting the general trend of the coast and the general trend of the water line of the indentation.

Exhibit 399 Sketch by Dr. Robert D. Hodgson, illustrating use of a 3-mile arc to ascertain shore points that affect the 3-mile limit.

Exhibit 400 Sketch illustrating treatment of an island as essentially mainland.

Exhibit 401 Sketch illustrating how differences in the shoreline affect the propriety of drawing closing lines to an island.

Exhibit 402 Sketch illustrating the effect of screening islands in reducing the area of inland waters in a bay.

BATON ROUGE HEARING

Exhibit 403 U.S. & G.S. Chart 5107, 30th ed. April 11, 1970, corrected thru NM 15/70. (With penciled closing line and application of the Boggs formula.)

Exhibit 404 Sketch of a nearly circular bay.

Exhibit 405 Sketch of a slight coastal curvature.

Exhibit 406 Sketch of a 90-degree coastal turn.

Exhibit 407 Sketch of a stair step coastal turn.

Exhibit 408 Sketch of a bay with double headlands.

Exhibit 409 Sketch of a bay with a remote coastal angle.

Exhibit 410 Sketch of a bay with a remote coastal angle.

Exhibit 411 Sketch by David Morgan of application of the semicircle test to a deep bay.

Exhibit 412 Sketch by David Morgan of an indentation that does not meet the semicircle test.

Exhibit 413 Sketch of closing lines in an interior indentation in a coastal curvature.

Exhibit 414 Sketch of small and large promentories.

Exhibit 415 Sketch of Louisiana Exhibit 338 at actual reduced scale.

Exhibit 416A Letter of April 27, 1971 from the Geographer of the Department of State to the First Secretary of the Embassy of the Federal Republic of Germany transmitting a set of 155 charts showing the provisional baseline territorial sea and contiguous zone of the United States.

Exhibit 416B A similar letter to Mr. E. John Cooper, Territorial Waters Office, Department of Fisheries and Forests, Dominion of Canada.

Exhibit 416C A similar letter to Mr. R. J. Fisher, President, Pickford and Black, Ltd. Halifax Canada, with a notation that copy was sent to Mr. Andrzei Wojtowicz.

Exhibit 416D	A set of 155 maps showing the limit of the territorial sea and contiguous zone of the United States and the limit of inland waters where needed for delimitation of those lines.
Exhibit 417	Deposition of Commander R. Lawrence Swanson.
Exhibit 418	Inked drawing used in conjunction with Comm. Swanson's deposition.
Exhibit 419A	Chart No. 8 of series of charts of Norwegian coast contained in Annex 35 of the reply of the United Kingdom in the Anglo-Norwegian Fisheries Case.
Exhibit 419B	Chart No. 9 of same as above (Norwegian maps).

No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,
Defendants.

APPENDIX III
CLOSING LINE CONTENTIONS OF THE STATE OF LOUISIANA INCLUDING POINT TO POINT DESCRIPTION

MISSISSIPPI RIVER DELTA

By straight lines:

	X	Y
Beginning at	2742583	353754
through	2737288	345654
through	2755325	204680
through	2755178	203815
through	2754925	203475
through	2754100	186915
through	2754263	186316
through	2753885	183460
through	2752470	182170
through	2751045	181305
through	2726105	148530
through	2724850	148150
through	2702461	124148
through	2701735	123905
through	2701255	124130
through	2701003	121725
through	2701237	120486
through	2701773	118961
through	2701672	118777
through	2701421	118995
through	2701221	118945
through	2701104	118141
through	2700970	117990
through	2700786	117889
through	2700535	117889
through	2699658	116782
through	2698997	117204
through	2697850	117200
through	2609180	91445
through	2607290	93040
through	2590100	203860

through	2589100	204125
through	2587400	205250
ending at	2585000	206975

CAILLOU BAY

By straight lines:

	X	Y
Beginning at	2164477	134753
through	2162430	135112
through	2157920	135521
through	2148929	136962
through	2147751	136599
through	2143589	136276
through	2139529	136276
through	2138231	136387
through	2134210	136726
through	2133089	136940
through	2128819	138694
through	2126697	139353
through	2122523	140238
through	2118829	141971
through	2118065	142532
through	2117317	143491
ending at	2076201	189799

SHELL KEYS

By straight lines:

	X	Y
Beginning at	1845475	293595
through	1846296	293267
through	1846637	292250
through	1845817	292053
through	1845331	290564
through	1845187	289107

through	1845935	287020
through	1845633	283208
through	1844412	280498
through	1844320	278858
through	1843467	275912
through	1839563	275511
through	1838067	274547
through	1837076	273569
through	1835344	270839
through	1834019	270301
through	1833527	271423
through	1833815	273018
through	1833822	274343
through	1833848	275957
through	1834163	276830
through	1835948	277559
through	1836138	278838
through	1835397	281476
through	1833612	283982
through	1833782	284744
through	1835738	286620
through	1835246	287834
through	1833763	290104
through	1833231	292919
through	1834432	294953
through	1835042	296456
ending at	1835502	296712

SPECIFIC DISPUTED SECTOR DESCRIPTIONS

1. **In the Mississippi Delta area described in issue A-1 from Errol Shoal to the western headland of Sandy Point Bay.** If Louisiana's historic waters (including historic straight baseline claims) are not accepted by the Court, the coast line description would be as contended in U. S. Exh. 389, proceeding from the north until the first alternative claim sector is reached at Dead Women Pass (Bucket Bend Bay).

The Statement of Issues includes some specific issues relating to geomorphic contentions for particular sectors within the Mississippi Delta. Descriptions of the primary geomorphic claims for these sectors are listed below in the same order as the Statement of Issues. Where secondary alternative claims have been urged by Louisiana, they are also given.

2. **From Dead Women Pass to North Pass.** The primary Louisiana closing line (baseline) claimed here, if more outward historic waters claims are not accepted, is a closing line from X = 2,708,835, Y = 221,440 to X = 2,738,320 to Y = 210,230. Alternatively, if U. S. Exh. 416-D has any effect, Louisiana should also benefit from the additional coast line claims and three-mile projections recognized as proper in that exhibit in the vicinity of Dead Women Pass, using banks of canals or streams used as arc points but for which no coordinates are plotted on the chart in U. S. Exh. 416-D. This alternative is not intended to waive Louisiana's objection to U. S. Exh. 416-D and is by way of rebuttal only. If the coordinate

at X = 2,738,320, Y = 210,230 is not accepted as the eastern natural entrance point of Bucket Bend Bay, then in that event it should serve as an arc point and the next more inward island would certainly be, as a minimum, the suitable natural entrance point. The resultant closing line would be X = 2,708,835, Y = 221,-440 to X = 2,737,065, Y = 210,155. Even if it is found that neither of the low-water elevations along the north natural levee of North Pass constitutes the natural entrance point, they are arc points and the more outward point of the technical mainland of the natural levee of North Pass found at X = 2,736,820, Y = 209,000 would justify a closing line from X = 2,708,835, Y = 221,440 to X = 2,736,820, Y = 209,000.

The enormous extent of uncounted water area of tributary water bodies within Bucket Bend Bay makes clear passage of the semicircle test obvious for whatever line might be chosen, especially given interdistributary subsidence trends.

3. **Pass a Loutre to Southeast Pass area, including Blind Bay.** The alternative claim of Louisiana in the sector of the third group of issues from Pass a Loutre to Southeast Pass under Louisiana's primary geomorphic position is a Lambert Grid coordinate description as shown below.

Here the historic inland water claim of *The Anna*, reinforced by practices of state and federal officials, and also that case's significance juridically in regard to treating mudlumps as part of the mainland, come into focus, with the description of a line extending from the

first coordinate shown below to and around the other coordinates given.

Call	X	Y
From	2,738,935	209,950
through	2,747,065	206,635
through	2,750,755	206,535
through	2,752,010	205,475
through	2,755,325	204,680
through	2,755,178	203,815
through	2,754,925	203,475
through	2,754,100	189,915
through	2,754,263	186,316
through	2,753,885	183,460
through	2,752,470	182,170
through	2,751,045	181,305
through	2,726,105	148,530
to	2,724,850	148,150

Even if Louisiana's contentions that the outermost mudlumps form natural extensions of the mainland levees and as such, natural entrance points of the inner distributary enbayments are rejected, natural entrance points of the embayments bounded by the mudlump groupings at Pass a Loutre and Southeast Pass that are more seaward than the federal contentions may be selected on more inward islands or even on the mainland. For example, if the southeast headland of the indentation between Pass a Loutre and Southeast Pass mouth is found not to be the small mudlump at X = 2,726,105, Y = 148,530 by reason of any government arguments, then certainly the substantially larger mudlump island at X = 2,725,730, Y = 149,795 would be appropriate as the natural entrance point.

4. **From Southeast Pass to South Pass including Garden Island and Redfish Bays.** The primary alternative description line here is from X = 2,724,850, Y = 148,150, to X = 2,702,461, Y = 124,148. Because of its relevance in emphasizing the interrelationship between historic waters and geomorphic alternative arguments here, we point out that this is the very sector in which "claim was given under the direction of the American ambassador . . . for territory of the United States." *The Anna* 5 C Rob. 373. This claim of territory should be understood as generally a claim of territory around the mudlump islands at the mouth of the Mississippi and not strictly limited to the precise situs of the incident involving vessels no more than Chesapeake Bay or Delaware Bay were limited as historic bays to the precise situs of the incidents that gave rise to the claims to those bays. Thus, in effect, the historic waters description based on the claim of *The Anna* should be interpreted as extending around all of the mudlumps but additionally, *The Anna* and the Supreme Court's rulings furnish legal precedent for standards for ascertaining extension of the mainland issues, for selecting the closing line of an unchallenged bay. On the latter issues, if it is not deemed appropriate to use the outermost mudlump at Southeast Pass, a more inward point for the closing line seaward of the federal admission may be used.

5. **South Pass.** The description Louisiana contends should be employed in this sector is:

	X	Y
From	2,702,461	124,148

through	2,701,735	123,905
through	2,701,255	124,130
through	2,701,003	121,725
through	2,701,237	120,486
through	2,701,773	118,961
through	2,701,672	118,777
through	2,701,421	118,995
through	2,701,221	118,945
through	2,701,104	118,141
through	2,700,970	117,990
through	2,700,786	117,889
through	2,700,535	117,889
through	2,699,658	116,782
through	2,698,997	117,204
to	2,697,850	117,200

If Louisiana's contentions on the extensions of additional mudlump islands that were not recognized in the 1959 low-water survey are not accepted, nonetheless, the additional mudlumps for certain time periods are recognized by the federal government. See description connected with what is styled "a newly formed mudlump" shown on Exh. 200 discussed at page 107 of the federal brief before the Master. The federal government had incorrectely argued

> Louisiana proposes a series of straight lines between offshore points which are not indicated as being on islands or low-tide elevations . . . .

This erroneous argument was based on an illustration which did not show the islands, because it was a summary of the lines, not the land points. The islands were not shown on that map but proven by photographs and shown on official charts until removed at the direction of counsel. We point out that *The Anna* also supports

an historic claim around mudlumps in this area, as the nature of the broad claim asserted by the American ambassador was to the areas enclosed by mudlumps. In any event, the United States agrees that the lumps should serve as arc points, as is true with all island-headland closures asserted by Louisiana, *supra*, even if closing lines are not recognized. (See three-mile projections made by the federal government off Southeast Pass on U.S. Exh. 416-D).

6. **From South Pass to Southwest Pass—East Bay.** Louisiana's historic inland waters in East Bay lie within a closing line extending from X= 2,697,850, Y = 117,200 to X = 2,609,180, Y = 91,445.

The next more inward possible closing line is the primary Louisiana juridical contention: Closing line A of La. Exh. 197 and 197A which extends from X = 2,697,850, Y = 117,200 to X = 2,624,995, Y = 108,700. If the Court determines that area measurement Method 3 (the Article 7 system of using islands and tributaries) is correct, then this closing line should be employed even to the present. Prior to the September 17, 1956 chart revision, line A satisfied Method 1 area measurement, so if Method 1 is the only approved method, still Line A should be employed for the accounting covering the period June 5, 1950 until the revision of Chart 1272 dated September 17, 1956.

Closing line B, La. Exh. 197, extending from X = 2,685,325, Y = 133,800 to X = 2,644,940, Y = 134,910 (slightly different if 1970 changes are employed, see La. Exh. 197) would be employed after

September 17, 1956 if Method 3 area measurement were rejected and Method 2 accepted.

Closing line B' would be appropriate for the period since September 17, 1956 if a more outward line is not approved and even if Methods 3 and 2 of area measurement are rejected. It satisfied the Method 1 semicircle test. It is slightly more seaward than line C' or line C because it employs as its eastern headland not the inner tip of Cowhorn Island but the outermost natural entrance point on Cowhorn Island, selected by the bisector of the angle method. Thus, its use depends on approval of that headland selection method for the point shown on Figure 13 of Louisiana's *Brief in Support of the Exceptions to the Report of the Special Master filed July 31, 1974*. Thus, the eastern headland is situated at approximately latitude 29°00′45″N, longitude 89°11′30″W. Its western headland, if the 1959 low-water survey is employed, is found at X = 2,644,940, Y = 134,910. If the charts are employed, its western headland is the tip of the spit paralleling Southwest Pass at approximately latitude 29°00′48″N, longitude 89°19′24″W, shown on the September 17, 1956 and September 17, 1962 editions of Chart 1272.

Closing line C' is appropriate if a more outward line is not used and even if Methods 3 and 2 are rejected. It would be appropriate for the time period commencing with the August 15, 1970 revision of Chart 1272 to the present, if it is decided to recognize the August 15, 1970 chart revision along Southwest Pass, but not to give it effect as to Cowhorn Island

because of inadequacy of the post-hurricane survey work to disprove its continued existence. It would run from the innermost tip of Cowhorn Island, X = 2,677,-650, Y = 138,050 to a point of land at approximately latitude 29°00′22″N, longitude 89°19′51″W as may be located on the August 15, 1970 edition of Chart 1272. See Figure 12 of Louisiana's *Brief in Support of the Exceptions to the Report of the Special Master filed July 31, 1974.*

Closing line C, La. Exh. 197, extending from X = 2,677,650, Y = 138,050, to X = 2,644,940, Y = 134,910, recognized by the Special Master, Report at 34, satisfied even Method 1 and should be utilized if the more outward closing lines are rejected. Its existence should be recognized for the period Cowhorn Island's existence is recognized, as it uses the innermost tip of Cowhorn Island as a headland. It employs as a base map a composite of the Set of 54 Maps as shown in La. Exh. 197, and uses the 1959 low-water survey, which surveyed the shore of East Bay as it existed in November 1959. Line C, prior to the 1959 low-water survey, existed more seawardly, due to the shorter length of the spit which parallels Southwest Pass. Therefore, for the period prior to 1959, if a more seaward line is not recognized, line C's location would be as shown and claimed on the September 17, 1956 chart overlay in La. Exh. 180, with a western headland which is the same as B' line at approximate latitude 29°00′48″N, longitude 89°19′24″W.

Closing line D, La. Exh. 197, extending from

X = 2,672,315, Y = 141,745 to X = 2,644,940, Y = 134,910 must be employed in the absence of the application of a more outward closing line.

7. **From Southwest Pass to Belle Pass: Ascension—Caminada—Barataria Bay complex.** Ascension Bay is an overlarge bay within the meaning of the Convention and Louisiana draws a 24-mile fallback line within it from Empire Canal to a point west of Caminada Pass, i.e. from X = 2,550,402, Y = 216,158 to X = 2,406,890, Y = 189,733. With this determination, the Master concurs. See Report at 46.

The areas covered by issues 8-10 of the Statement of Issues, reprinted as Appendix A-1 of the Master's Report, involve either uncontroverted matters or minor disputes concerning survey or chart questions, plus bayou or small bay mouth issues. Some of these issues are moot under the Master's Ascension Bay findings. Louisiana has taken exception only to the survey or chart questions treated in paragraphs (c) through (e), Report at 47. These pertain to the period of existence of certain low-water lines. Louisiana maintains that the low-water lines of paragraphs (c) through (e) should be recognized even to the present and used as base points for the application of the ruling in paragraph (b), Report at 47, calling for use of the low-water line.

11. **Caillou Bay.** Commencing at X = 2,164,477, Y = 134,753 and proceeding westerly, the historic waters closing line descriptions given *supra* accords

with Louisiana's juridical-geomorphic bay description. Upon a finding that the Special Master too-narrowly construed his authority in the area of Caillou Bay, the closing line found by the Special Master after a full evidentiary hearing, Report at 51, should be employed.

12. **Atchafalaya Bay.** As shown on La. Exh. 194, the closing line here should be from X = 1,987,371, Y = 241,272 to X = 1,855,055, Y = 296,154, but as found by the Master, Report at 52, more outward points on islands or low-water elevations should be given effect as arc points under prior decisions of the Court, 409 U.S. 17.

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No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

ON THE REPORT OF THE SPECIAL MASTER

REPLY MEMORANDUM FOR THE UNITED STATES

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REPLY MEMORANDUM FOR THE UNITED STATES

STATEMENT AND INTRODUCTION

The present memorandum is entirely devoted to answering the points raised by Louisiana's Brief in Support of its Exceptions. We do not repeat the arguments advanced in our own initial Memorandum, although some portions of that earlier submission are incorporated by reference. For the Court's convenience, we have here followed the State's sequence and, so far as possible, have avoided burdening the Court with additional illustrative materials, citing instead to

Appendix I of Louisiana's Brief which reproduces most of the essential maps.[1]

One preliminary comment is appropriate. Throughout its present submission, Louisiana suggests that all close questions ought to be decided in its favor, wherever necessary by bending the rules of the Convention on the Territorial Sea and the Contiguous Zone. It is said that the Special Master construed the Court's most recent opinion "too narrowly" (La. Brief, p. 7), that his application of the semicircle test was "erroneously conservative" (*id.* at p. 77), that "practical handling" and "the interest of justice to the state" suggest deviation from strict criteria (*id.* at pp. 80–81, 150, 153–154), that the United States will at all events receive the "lion's share" of the revenues (*id.* at pp. 151–154), and that Congress did not intend to be "miserly about minutiae" (*id.* at pp. 87, 154). All this, we submit, is improper argument, especially at the present stage of the proceedings.

It is worth noting that this plea for resolving the dispute in a "practical" way, under the influence of the relatively greater importance of the revenues to the State, was put forward when the case was last here and was expressly rejected by the Court—over the vigorous dissent of Mr. Justice Black, joined by Mr. Justice Douglas. 394 U.S. at 32–35, and see *id.*

[1] We remind the Court that a useful overall map of the Louisiana coast—helpful for picturing the larger areas in dispute and for locating the smaller indentations discussed—is reproduced at the end of the Court's previous opinion in the case, 394 U.S. 11, opposite p. 78.

at 78 n. 2, 88. The argument is now foreclosed. It is, moreover, quite impossible to justify breaking the rules for the special benefit of Louisiana. Having determined that the Convention on the Territorial Sea governs the delimitation of inland waters for the purpose of the Submerged Lands Act, the Court cannot invent novel rules for a single State. Nor would it be right to interpret the Convention one way for international relations and differently here. As it happens, Louisiana has already benefited from unique federal concessions. See 394 U.S. at 66–67 n. 87. There is no occasion for the Court to reward the State's unusually litigious history with further special generosity.

I

LOUISIANA'S FIRST EXCEPTION: EAST BAY AS HISTORIC INLAND WATER

The State, in its initial brief on the Report of the Special Master, devoted some 131 pages to the contention that East Bay (defined at its maximum size) is historic inland water.[2] The sheer bulk of this submission, and the number of the exhibits which are said to support it, might suggest that there is at least a colorable claim. We submit, however, that, properly analyzed, Louisiana's evidence does not come close to making out historic inland title to East Bay and that the Master was entirely correct in concluding (Report,

[2] See Louisiana's Brief in Support of Exceptions, pp. 8–59, and Appendix I thereto, pp. 5–35, 45–48, 129–172.

p. 21) that "there is no basis for Louisiana's claim of historic inland waters extending beyond the limits of its coastline as determined [under the normal juridical rules for bays]."

We reproduce as Appendix A (*infra,* pp. 55–73) the full submission we made to the Special Master on the State's historic inland claims. It deals, point by point, with each of Louisiana's assertions. Beyond that, we rely on the Special Master's treatment of the matter in his Report (pp. 13–22; see, also, pp. 5–13).[3] It may be helpful, however, to recapitulate briefly, with special emphasis on the State's new arguments.

In light of what the Court has already said in this case, there can be little dispute as to the legal criteria for establishing ripened title to a bay as historic inland water. It is common ground that three primary factors are relevant: "(1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States" (394 U.S. at 23–24 n.

[3] The Special Master dealt with some of the matters advanced by the State as relevant to a contention that the United States, at some earlier time, "had actually drawn its international boundaries in accordance with the [straight baseline] principles and methods embodied in Article 4 of the Convention on the Territorial Sea and the Contiguous Zone." See 394 U.S. at 74 n. 97. The Master rejected that proposition and Louisiana has taken no exception to his ruling. In the circumstances, we are content to rely, for this point, on the Report (pp. 5–13). It may be, however, that the State continues to invoke the straight baseline evidence in support of its historic inland water claim and we accordingly deal with it under that heading. See particularly, Appendix A, *infra*, pp. 62–64, paras. 17–22.

27).[4] In this domestic litigation, however, there are also additional ingredients: (4) the effect of state actions which the national government has not invoked vis-a-vis other nations; and (5) the effect of a disclaimer of historic title by the federal government. We consider each of these factors in turn.

1. EXERCISE OF AUTHORITY

It would seem self-evident that, to establish historic title to an area as *"inland"* or *"internal"* waters,[5] the claimant must show exercise of that sort of authority which clearly indicates such a full title. Otherwise, all that is suggested is jurisdiction over the area as *"territorial"* waters—whether by historic title or otherwise. Indeed, this Court made that plain in its most recent opinion. 394 U.S. at 24 n. 28, 26 n. 30. And it is common sense: how can other nations be on notice that the coastal State is claiming an area as part of its internal waters when the acts performed are entirely consistent with the assertion that the area is part of

[4] The Court was quoting from a United Nations publication, "Juridical Regime of Historic Waters, Including Historic Bays," U.N. Doc. A/CN.4/143, 2 *Yearbook of the International Law Commission* (1962), p. 13. A typed copy of that publication, which collates and summarizes the views of leading writers on the subject and has been much cited by the Court and by both parties, is part of the record here as U.S. Exhibit 99.

[5] The terms "inland" and "internal" are synonymous. The first is used in the Submerged Lands Act, the second in the Convention on the Territorial Sea and the Contiguous Zone, to denote waters landward of the territorial sea. See 394 U.S. at 22–23.

the territorial sea? Yet, Louisiana now apparently challenges this settled proposition.

What the State asserts is that the rule just stated applies to *open* waters claimed as historic, but not to *bay-like* indentations. La. Brief, pp. 22–43. There is no warrant for any such distinction, in this Court's opinion or any of the authorities cited. All Louisiana has shown is that the term "historic bay" is commonly understood to connote inland waters—not that a bay-like area cannot assume the lesser status of historic territorial water. See "Juridical Regime of Historic Waters," U.S. Exh. 99, p. 66. It may be unusual to claim historic title to a bay-like area as only territorial waters, but that is only because most of such areas—as in the case of East Bay—will qualify as part of the territorial sea under normal juridical rules. The fact remains, however, that historic *inland* water title cannot be established with respect to an indentation without some exercise of authority beyond what is permitted in the territorial sea. Else, every indentation that is not a true bay but is part of the territorial sea *ipso facto* would become historic inland water.

At all events, Louisiana misstates the Special Master's reasoning when it suggests that he concluded that East Bay is an "historic territorial bay" (La. Brief, pp. 22–23, 27, 37 n. 28). There is no such finding. In most of his references to the territorial sea, the Master was simply pointing out that the evidence merely disclosed regulatory activities permitted within the 3-mile belt off the shores of East Bay—the conventional territorial sea established by international

law regardless of any historic claim. To be sure, the Report also notes that activities beyond that belt might be advanced in support of the wider territorial sea which the State was then claiming (Report, pp. 21–22). But there is nothing approaching a conclusion that Louisiana had proved a ripened historic title to the whole of East Bay as territorial waters. On the contrary, the Master explicitly ruled in the negative on this issue—one that Louisiana itself had suggested. See the Statement of Issue 1(e) at Report, p. 56, and the finding thereon at Report, p. 22.

Strictly speaking, the only clear indication that a coastal state is claiming waters as internal (or inland), rather than as part of its territorial sea, is the denial of the right of innocent passage. It would be dispositive *against* a claim of historic inland waters that innocent passage by foreign vessels regularly occurred without let or hindrance. 394 U.S. at 26 n. 30. But it does not follow—as Louisiana appears to suggest (La. Brief, pp. 31, 36, 38)—that the burden is on the party challenging a claim to historic inland water to show that foreign ships entered the area freely. On the contrary, historic title is an exception to the normal rule and the burden of proof is always on the claimant. See "Juridical Regime" p. 153; U.S. Exh. 99, p. 62. It may be, as some of the authorities suggest, that evidence of acts effective against foreign nationals other than denial of innocent passage is relevant to a claim of historic inland waters. But, obviously, the more ambiguous the character of those acts, the more numerous and long continued they must be. Certainly, equivocal legislative declarations are

insufficient. See *United States* v. *California*, 381 U.S. 139, 174. Nor can occasional deeds which would be permissible in the territorial sea establish historic title to waters as inland.

When we test the State's evidence under these principles, there is very little indeed that even arguably qualifies as an assertion that East Bay is historic inland water. Plainly, no action taken by the federal government remotely amounts to a claim that East Bay is an historic bay. See Appendix A, *infra*, pp. 62–65, paras. 17–22; Report, pp. 7–13. We turn immediately to Louisiana's own declarations and activities. These relate exclusively to fishing (including oystering and shrimping) or to mineral exploration. Here we caution that the Master's summary findings appended to his Report (pp. 67–69) must be read as qualified by the discussion in the main body of the Report (pp. 19–22).[6] Only as so construed, is it fair to say that the

[6] Thus, Finding 15 (Report, p. 69) alone might be read to suggest that a State mineral lease covering the entirety of East Bay has been in effect since 1928. Yet, the Master expressly concluded (Report, p. 19) that "there is no evidence that any of these leases extended more than three miles from the low-water line of the shore," and, indeed, a plat related to the East Bay lease (La. Exh. 90) identifies a 3-mile belt only.

On the other hand, it should be noted how carefully some of the findings are worded to avoid any misstatement. While all of the Master's findings are obviously borrowed from the State's Motion to Clarify (Proposed Findings 5A–5X) and 6, reproduced in La. Brief, Appendix I, 155–163), it is significant how some are changed. For instance, in Finding 6 (Report, p. 68), "from time to time" has been substituted for "continuously" (La. Brief, App. I, p. 158, para. P), and in Findings 9, 10 and 11 (Report, pp. 68–69) the ambiguous term "Louisiana waters" has been substituted for "East Bay" (La. Brief, App. I, p. 159, paras. R, S and T).

facts are "not disputed by the United States" (Report, p. 15).[7]

With respect to oystering, shrimping and fishing, the State produced a number of regulatory statutes. But they reveal no consistent pattern. Many simply ambiguously embrace "Louisiana waters" or "bays" without specification, or name some bays but not East Bay (*e.g.*, La. Act 245 of 1910; La. Act 103 of 1926); others expressly limit jurisdiction to the 3-fathom line—always less than 3 miles from shore (*e.g.*, La. Act 143 of 1942; La. Act 51 of 1958); and there are more equivocal descriptions (*e.g.*, La. Act 452 of 1962). Obviously, no historic inland title can be founded on such weak footings.

Nor is the evidence of the administration of these laws any clearer. Oyster leases, concededly, were never granted more than 3 miles from shore. There was testimony that foreign fishermen were required to, and did, obtain licenses to fish in "Louisiana waters" (see findings 9 and 10 appended to the Master's Report, p. 68), and that state patrols, "from time to time," followed the shortest route between the two passes (see Finding 6, Report, p. 68)—which may show no more than a convenient method of guarding the 3-mile belt. But, even assuming Louisiana's enforcement officials applied that requirement to all of East Bay, it may well be that the fishermen acquiesced

[7] As Louisiana points out (Brief, p. 16 n. 10), Appendix B to the Report was added at a late stage. The United States had no opportunity to suggest changes, although, as just noted (n. 6, *supra*), the Master himself significantly altered some of the Proposed Findings submitted by the State.

because they wished to enter what were admittedly inland waters. At all events, the only actual arrest adduced—without any documentation—was a single incident in 1946 involving three Mexican fishing vessels (see Findings 6, 11 and 12 at Report, pp. 68–69, and Report, p. 20).[8]

The upshot is an equivocal history of some regulation of fisheries, mostly within a 3-mile territorial belt which, of course, indicates no inland water claim. See authorities cited in Appendix A, *infra,* pp. 66–67, paras. 24–25, and Pub. L. 88–308, 78 Stat. 194, 16 U.S.C. 1081, *et seq.* Nor, indeed, does regulation beyond that limit necessarily imply more than a wider territorial sea (which Louisiana in fact claimed until 1960) or a special fishing zone. See Pub. L. 89–658, 80 Stat. 908, 16 U.S.C. 1091–1094; and see Convention on Fishing and Conservation of the Living Resources of the High Seas, T.I.A.S. No. 5969 17 U.S.T. 139, Art. 7

The evidence relating to mineral exploration is even less persuasive We have already noted (*supra,* p. 8 n. 6) that the record suggests no leasing by the State—and certainly no exploitation by its lessees—more than 3 miles from shore until well after the United

[8] Again, we stress the importance of a careful reading of the Findings appended to the Report together with the main text. Thus, read quickly and alone, Findings 6 through 12 (Report, pp. 68–69) might well convey a picture of rigorous enforcement, accompanied by many arrests, for the whole of East Bay, whereas the Master's discussion in the main body of the Report (pp. 20–21) makes it clear that there is, in fact, only one isolated incident, and his cautious rewording of the State's proposed findings indicates doubt concerning any effective fishing regulation beyond 3 miles from shore. See note 6, *supra.*

States (initially by Presidential Proclamation in 1945, later by statute and international convention) claimed the exclusive right to the resources of the seabed underlying the entire continental shelf. Indeed, when the case was last here, Louisiana expressly dated the first leasing beyond 3 miles at 1947. See Brief of the State of Louisiana in Support of its Motion, etc., No. 9, Original, October Term 1968, pp. 247–248. Any subsequent leasing could not be understood by foreign nations as based on an historic claim to inland water in light of the national (and later international) position that such exploitation was *beyond* even territorial waters. See Appendix A, *infra,* pp. 70–71, para. 29.[9]

Finally, Louisiana refers to pollution control within East Bay. But, so far as the evidence discloses, that was entirely related to post-1947 mineral operations. Moreover, it imports no claim to the waters as inland. See *Askew* v. *American Waterways Operators, Inc.,* 411 U.S. 325. And see Convention on the High Seas, T.I.A.S. No. 5200, 14 U.S.T. 2313, Art 24; Convention on the Continental Shelf, *supra,* Art 5(7).

[9] Thus, Proclamation No. 2667, 10 Fed. Reg. 12303, issued by President Truman on September 28, 1945, while claiming for the United States the resources of the seabed and subsoil of the American continental shelf, expressly notes that "[t]he character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected." Similar disclaimers are included in the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462, 43 U.S.C. 1331, *et seq.,* 1332(b); and the Convention on the Continental Shelf, T.I.A.S. No. 5578, 16 U.S.T. 472, Art. 3.

2. CONTINUITY OF THE EXERCISE

It is well settled that historic title to inland waters does not ripen quickly. In the words of the United Nations Publication "Juridical Regime of Historic Waters," quoted by this Court (394 U.S. at 23–24 n. 27), the "exercise of authority must have continued for a considerable time; indeed it must have developed into a usage." Isolated or occasional assertions of jurisdiction, even if importing a claim to full sovereignty, simply will not do. See *United States* v. *California*, *supra*, 381 U.S. at 174–175. Nor will a short-lived declaration or course of conduct, however consistent for the time.

Apparently recognizing the weakness of its case on this score,[10] Louisiana would "tack on" to a more recent period of "adverse possession" an earlier, and longer, span during which the area now claimed as historic inland waters was a juridical bay. We submit that is an impermissible procedure. The dispositive reason is that such a doctrine would defeat the principle of ambulatory coastlines, which is a fundamental aspect of the law of the sea.

Indeed, the normal rule is that an area which ceases to qualify as a bay because of a change in geography thereupon ceases to be inland waters. Of course, the coastal state may take steps to assert continuing jurisdiction and, provided appropriate exercise of authority

[10] We note that the only unambiguous findings by the Master of state activities more than 3 miles from shore are with respect to the Mexican vessel incident of 1946 (Findings 7 and 12, Report, pp. 68, 69) and the line followed by boat and aircraft patrols "from time to time" (Finding 6, Report, p. 68).

is continued long enough and wins the acquiescence of other nations, a new historic title to the area eventually will ripen. But such historic title does not inure simply because the waters were once a juridical bay. Nor can the new title—which is essentially adverse to the rights of foreign nations—begin to mature until the juridical basis for treating the waters as inland is terminated. Any different rule would prejudice the principle that other nations must have ample notice and opportunity to prevent the encroachment on the freedom of the seas that historic title represents.

It need hardly be added that the argument for "tacking" a period of "legal" title to make up the long usage required for ripened historic title is all the weaker when the claimant shows no active assertion of sovereignty during the period when the area was juridically part of its territory. So, also, no such contention is even arguable if the claimant allowed a substantial hiatus to occur after legal title was lost and before dominion was reasserted by positive acts. As we shall see, that is the history of East Bay.

Louisiana makes too much of our concession that East Bay appears to have satisfied the then criteria for a juridical bay until perhaps as late as 1918. See La. Brief, pp. 8, 11, 12 n. 8, 16 n. 10, 18, 19, 20, 21, 22, 23, 35, 67, 114.[11] Except for very weak and equivo-

[11] The evidence shows that East Bay ceased to qualify as a juridical bay some time between 1900 and 1918—the chart issued in the latter year indicating a mouth well in excess of 10 miles. See La. Exh. 23; Appendix A, *infra*, pp. 59–60, paras. 8–11. Thus, at best, East Bay was a juridical bay at least until 1900—not "until at least 1918" as Louisiana repeatedly asserts.

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cal evidence of patrols crossing the wide mouth, there is absolutely nothing to show any exercise of sovereignty more than 3 miles from shore during the Nineteenth Century or the first two decades of the Twentieth. Nor, indeed, is there more for the period from 1918 through 1946—when the State was apparently confining its oyster and mineral leases to a belt 3 miles from shore. The only conclusion is that Louisiana's claim to East Bay as a whole really dates from about 1947 and was then promptly contested by the United States. In these circumstances, there can be no legitimate argument that an unbroken pattern has "developed into a usage."

3. ATTITUDE OF FOREIGN STATES

In our view, the question whether the emergence of an historic title to inland waters requires the "acquiescence" of foreign states, or merely the absence of their protests, presents a largely false issue in this case. For our part, we do not assert that explicit recognition of an existing inland water claim is always, or even usually, necessary. We do suggest that, since the attitude of foreign nations is an essential ingredient of establishing historic title, it is necessary, at a minimum, that the claimant have, over a considerable time, conducted such activities within the area as unambiguously as to put other nations on notice that historic inland water title was being asserted. Only then can the failure of affected nations to protest realistically be viewed as tacit acquiescence. See the testimony of Dr. Bouchez at Tr. 1079–1080.

We insist only that "toleration" or "acquiescence" cannot be presumed without some indication that foreign *governments*—not merely some of their citizens—were made aware of an inland water claim and no such inference is justified unless the claimant consistently and notoriously took action unequivocally announcing its treatment of the area as part of its "inland" territory. See "Juridical Regime," ¶96; U.S. Exh. 99, p. 43.

What, then, is the evidence on this question with respect to East Bay? We have already noted that the declarations and deeds alleged by the State would not have alerted other nations that an historic claim to inland waters was being asserted—because they were neither consistent nor unequivocally "inland" in character. It was never shown that any other nation had notice of an inland water claim for East Bay. Accordingly, it would be very unreal to construe absence of protest as tacit acquiescence.

4. EFFECT OF STATE ACTIONS

In light of the Court's prior opinion (394 U.S. at 76–78), we of course concede the relevance of some State actions, even though the United States has not chosen to invoke them against foreign nations. But there are two important caveats, which the Court itself noted. The first is that State activities may be asserted to support Louisiana's historic inland water claim only

"[t]o the extent [that] the United States could [—albeit it does not—] rely on [them] in advancing such a claim." 394 U.S. at 77–78. The other is that the State cannot predicate its case on actions which were, at the time, "repudiated by or inimical to the interests of the national sovereign * * *." 394 U.S. at 76 n. 103.

The initial qualification has this consequence: that actions which, if taken by the national government, would not imply a claim to the area as inland water, cannot have greater significance because performed under state authority. The reason is, of course, that foreign governments cannot be expected to know—nor indeed care—about the division of jurisdiction between federal and state governments. Thus, if other nations are excluded from certain activities near the American coast on grounds that do not, as a matter of international law, depend upon the character of the area as inland, it is irrelevant that the regulation is imposed by Louisiana which asserts power—and perhaps, as a matter of domestic law, can only act—on the basis that the area is inland. This principle alone disposes of most of Louisiana's "historic" evidence.

With respect to the second point, it is perhaps only necessary to say that Louisiana cannot rely on any exploration or exploitation of the seabed of East Bay after 1948 when the United States expressly challenged Louisiana's claim in the area. Any such action by the State, or under its authority, plainly would have been "inimical to the interests of the national sovereign."

5. EFFECT OF FEDERAL DISCLAIMER

We fully accept that a disclaimer of historic inland waters by the United States is not "decisive in all circumstances" (*United States* v. *California, supra,* 381 U.S. at 175) because the federal government does not enjoy "complete discretion to block" such a claim (394 U.S. at 77). What is more, we recognize that a federal disclaimer, so far as this domestic litigation is concerned, may be ineffective with respect to historic title which had already ripened. 394 U.S. at 77 n. 104. Nor need we insist in this case that, in the face of such a disclaimer, the State's case for historic title must be "clear beyond doubt." See *United States* v. *California, supra,* 381 U.S. at 175; 394 U.S. at 77. But we do submit that a disclaimer by the United States is strong evidence against a claim to historic inland waters, and that the claiming State has a heavy burden to show that the disclaimer purports to nullify vested historic title.

Louisiana's effort to deny the existence of any disclaimer cannot avail. Whether or not any particular document is technically flawed, nothing is clearer than that, since 1948, the United States has consistently asserted that East Bay is not inland water. See Appendix A, *infra,* pp. 58–59, para. 6, pp. 71–72, para. 30. Nor is there the slightest basis for any suggestion that the government has adopted one position for the purpose of this litigation and a different one in its foreign relations. On the contrary, at all stages, the Department of Justice has consulted the Department of State and made certain that a single federal submission was

advanced. This is fully disclosed by the correspondence of record in the case (see U.S. Exhs. 108–114) and by the testimony of the Geographer of the State Department before the Special Master.

Our submission is that the evidence supporting a claim to East Bay as historic inland water would be wholly insufficient as a matter of international law even if now endorsed by the United States. Certainly, it cannot overcome what is, in fact, a disclaimer repeatedly asserted over a quarter of a century.

II

LOUISIANA'S SECOND EXCEPTION: OTHER HISTORIC BAY CLAIMS

Louisiana apparently asserts historic inland title to Blind Bay, Garden Island Bay, West Bay, an area which it labels "Isle au Breton Bay," and Caillou Bay. Brief, pp. 60–66. With respect to all of these claims, it is fair to say that the evidence is even weaker than for East Bay. See La. Brief, Appendix I, pp. 172–210. At all events, there is no basis for extending the juridical boundaries of the first three bays, nor any arguable ground for defining "Isle au Breton Bay" (which does not qualify juridically) as an "historic bay." It may be appropriate, however, to deal briefly with the special case of Caillou Bay.

Louisiana has advanced no significant historic evidence with respect to Caillou Bay. It is a special case only because, until 1968, the United States did not challenge the State's assertion that the "bay" was inland—for *juridical,* not historical reasons. That fact,

however, cannot establish historic title. Nor can Louisiana's mineral operations between 1948 and 1968, since during that period the American claim to exclude foreigners from exploitation of the continental shelf—not based on any inland water theory—was fully in force.

In truth, the State's argument has nothing to do with the criteria for establishing historic title: it is simply an assertion of estoppel against the federal government. See La. Brief, p. 63 n. 39, 146–150. We defer discussion of that contention to our treatment of Louisiana's Sixth Exception, *infra,* pp. 47–52

III

LOUISIANA'S THIRD EXCEPTION: EAST BAY AS A JURIDICAL BAY

In our initial Memorandum (pp. 10–16), we fully articulated—and illustrated—our submission that *no part* of East Bay (except minor pocket bays that do not affect the Submerged Lands Act grant) qualifies as a juridical bay. The question of the existence of "Cow Horn Island" aside, the reasons we gave there for opposing Closing Lines C and D—which did *not* rest on failure to meet the semicircle test—are fully applicable to Closing Line A, its earlier variants, and Closing Lines B, B', and C' discussed in the State's opening Brief (pp. 67–115). We do not repeat those arguments here; if they are accepted the matter is at an end. But, if the Court is not persuaded by our earlier submission, it will be necessary to con-

sider independent objections to closing lines more seaward than those approved by the Master, and we accordingly turn to these issues.

Proposed Closing Lines A and B (illustrated at Figure 4 of Louisiana's Brief, p. 73) are impermissible, among other reasons, because they fail to satisfy the semicircle test stipulated by Article 7 of the Convention on the Territorial Sea and the Contiguous Zone (reproduced, in relevant part, at Report, pp. 22–23, and in full in our initial Memorandum, pp. 33–34). To overcome that impediment, Louisiana advances two propositions which we shall discuss: (1) that the Master misapplied the semicircle test, and (2) that he wrongly ignored evidence of erosion of land within East Bay (primarily at Joseph Bayou) which, if taken into account, would have sufficiently increased the water area behind the closing lines as to satisfy the semicircle test even as "conservatively" applied by the Master. After disposing of those points, we shall very briefly note other objections to each of the proposed closing lines (other than C and D treated in our initial Memorandum), irrespective of the semicircle test.[12]

[12] We do not deem it necessary to address Louisiana's argument that, because East Bay as a whole, or some large part of it, once satisfied the semicircle test (long before it was developed), that should somehow influence the Court to waive the strict rules of the Convention (see La. Brief, pp. 67–69, 114–115). Whatever the relevance of that fact to the "historic bay" submission, it obviously can have none here. As the Master rightly concluded (Report, pp. 34–35), the principle of ambulatory coastlines cannot tolerate an exception which would ordain "once a bay, always a bay."

At the outset, however, it is right to point out that Louisiana's present arguments are an afterthought devised for this final stage of the proceedings. When the case was last before the Court, there was no dispute about the correctness of the East Bay maps or concerning the application of the semicircle test to the area. Not only did the State freely concede that East Bay as a whole did not satisfy the test, but (historical claims aside) it asserted as the most seaward line that would meet the semicircle test a closing line well landward of Closing Line A and one that enclosed less water than Closing Line B. Indeed, that line, closely approximating the presently proposed Line C[1], was obviously based on semicircle measurement principles corresponding to those accepted by the United States and now characterized by the State as "Method 1."[13]

We do not, of course, criticize Louisiana for withdrawing the closing line it suggested in 1968. It was no more than an arbitrary fallback line which the Court held improper unless it independently satisfied all criteria besides the semicircle test. See 394 U.S. at 53–54. But, on the other hand, the State's present submission—entirely inconsistent with its 1968 position—must be recognized for what it is: a last-ditch salvage attempt, which the Court may well view with suspicion. See Report, pp. 29–30.

[13] See 1968 La. Brief in Support of its Motion, etc., p. 263. Compare the coordinates for the line there described and the claimed water acreage behind it with the relevant data for Closing Lines A and B. Report, pp. 29, 31, and La. Exh. 197.

1. APPLICATION OF THE SEMICIRCLE TEST

Article 7(3) of the Convention on the Territorial Sea and the Contiguous Zone tells us only that, in applying the semicircle test, we must measure the area "lying between the low-water marks around the shore of the indentation and a line joining [14] the low-water marks of its natural entrance points," counting islands wholly [15] within the indentation "as if they were part of the water areas of the indentation." Both parts of this rule have given rise to disagreement between the parties. But the difference is not as straightforward as the State would have it.

(a) *Following the low-water line of the shore.*—Read literally, Article 7(3) would seem to forbid using any water crossings other than the main bay-closing line in applying the semicircle test. But that is obviously impossible. As the Special Master commented (Report, p. 29), "[i]f this were accepted, the entire lower portion of the State of Louisiana would have to be treated as one gigantic over-large bay." [16] Indeed, the State itself recognizes that it is necessary to abandon the shoreline and make water crossings *at*

[14] We note that the Master's Report (p. 23) inadvertently substitutes "adjoining" for "joining."

[15] The Court itself has already ruled that "within" means "wholly within." 394 U.S. at 59–60.

[16] In truth, if the State's Method 3 were consistently applied with all connected waterways included as bay waters and all intervening "islands" treated as water, the entire Mississippi River Delta and much else must be deemed part of the Gulf of Mexico—depriving Louisiana of all of the areas now in dispute. See note 27, *infra*, p. 29.

some point, notably when one reaches the mainstreams of the Mississippi River flowing down Southwest and South Passes. La. Brief, pp. 89–90, 91 n. 54. And so did Mr. Justice O'Connor in the so-called *Thames Estuary* case by suggesting that river waters above the tide-line ought to be excluded. *Post Office* v. *Estuary Radio, Ltd.* [1967] 1 W.L.R. 847, 862–864; [1967] 3 All E.R. 663, 673–674.[17] Thus, *everyone* agrees that in defining the limits of a putative bay one cannot include *all* waters physically connected to it.

On the other hand, it is *not* our position that *no* subsidiary waters should be included. The Court itself has correctly summed up the federal submission (394 U.S. at 51):

> The United States does not reject the notion that some indentations which would qualify independently as bays may nonetheless be considered as part of larger indentations for purposes of the semicircle test; but it denies the existence of any rule that *all* tributary waters are so includible. Article 7(2), it emphasizes, refers to "that indentation." The inner bays can be included, therefore, only if they can reasonably be considered part of the single, outer indentation. And that cannot be said of inland waters which * * * are wholly separated from the outer body of water and linked only by narrow passages or channels.

[17] We discuss this case in a moment. It is well to note immediately, however, that the passage invoked by Louisiana is at best an alternative holding by a single judge of an English court of first instance, and that his conclusion on this point was *not* endorsed by the Court of Appeals. See *infra*, p. 25.

What is more, as the Court noted (394 U.S. at 53 n. 70, referring to *id.* at 51 n. 67), we have not endorsed an alternative suggestion advanced by Shalowitz that self-qualifying inner bays must be excluded on that ground alone. The issue, then, is *which* "tributary" waters ought to be counted.

We submit the Master correctly resolved the question. Report, pp. 29–31. In adopting Louisiana's so-called "Method 1"—which, so far as relevant here, is the federal position—he included tributary bays, coves and inlets, regardless of whether they independently qualify as bays, but not the waters of "rivers and streams flowing into a bay." See Report, p. 31. This is entirely consistent with the views of Dr. Pearcy and Mr. Shalowitz quoted by the Court (394 U.S. at 51 n. 66) and again invoked by Louisiana (La. Brief, pp. 78, 91–92 and n. 56). Nor is it in any way at odds with the Court's rulings with respect to Ascension Bay and West Bay, which merely included subsidiary *bays*.[18] There is, indeed, *no* authority to the contrary except the alternative holding, at the trial level, of a single English judge, which we now consider.

The issue in the *Estuary Radio* case, *supra,* was whether the operation of an unlicensed radio station located at Red Sands Tower, more than three miles from the English shore, could be enjoined because its situs was within British internal or territorial waters. That, in turn, depended upon whether the Thames estuary, properly defined, qualified as an overlarge

[18] See discussion, *infra*, pp. 28–29.

bay; if there was a juridical bay—however delimited—the parties agreed that Red Sands Tower was well inside the fall-back line and therefore in internal waters. The trial judge fully resolved the dispute by fixing the "natural entrance points" of the estuary at places (the Naze in Essex and Foreness Point in Kent) that, concededly, created a true bay, satisfying the semicircle test *without including any river waters.* [1967] 1 W.L.R. at 853–862; [1967] 3 All E.R. at 666–673. Only then, for the eventuality that his basic holding should be reversed on appeal,[19] did the judge go on to discuss the propriety of including river water up to the tideline. [1967] 1 W.L.R. at 862–864; [1967] 3 All E.R. at 673–674.[20]

It is noteworthy that, in reaching his conclusion, the judge did not rely solely on the convention, or even the Order in Council which gave it effect, but invoked special statutes pertaining to the Thames River. What is more, his result depended on the *tidal* character of the rivers, which more obviously identified their waters with those of the bay. But, at all events, when the case went up to the Court of Appeal, this alternative holding was not endorsed. On the contrary, Lord Justice Diplock (now Lord Diplock), speaking for a unani-

[19] Had the northern terminus of the bay been fixed at Orford Ness instead of the Naze, the enclosed area would not have satisfied the semicircle test unless upriver water was added in.

[20] The Judge went on to make a further alternative holding: that if the area considered did not qualify as a bay, nevertheless Red Sands Tower was within the British *territorial* sea because it was sufficiently near one or more low-tide elevations. [1967] 1 W.L.R. at 864–868; [1967] 3 All E.R. at 674–677. This aspect of the decision is, of course, irrelevant to our problem.

mous Court of Appeal, expressly declined the invitation of both parties to decide the issue whether upstream river waters should be included in semicircle measurement. [1968] 2 Q.B. 740, 760–761; [1967] 1 W.L.R. 1396, 1407; [1967] 3 All E.R. 679, 684. It is fair to infer that the appellate court thought Judge O'Connor's rule less than self-evident. There is thus no authoritative English ruling. We submit this Court ought not be guided by the alternative holding of a single trial judge whose opinion, in any case, partly depends upon facts and law peculiar to the Thames situation.

We turn, then, to the common sense of the issue. As we have seen, there must be a stopping place in tracing the waters appurtenant to a bay. The first question in every case must be whether the connected body of water realistically can be viewed as part of the primary indentation. That judgment, it seems to us, must depend on the width and length of the connecting channel and the shape of the subsidiary water body. Obviously, subsidiary bays or coves which have a wide opening to the main indentation ought to be included (whether or not they would independently qualify), and that has been freely done in East Bay.[21] So, also, a bay-like area immediately adjacent to the main indentation, connected by a narrow but very short channel, is a better candidate for inclusion than

[21] The Master, using Louisiana's Method 1, has included, among others, all the "pocket bays" we referred to in our initial Memorandum, p. 12 n. 13, and Drawing 1, opposite p. 14. The parties are agreed that this was entirely proper.

a long stream or canal of the same width that does not widen out or lead to any distinct bay or pond or lake. This no doubt partly explains the Court's ruling that Bob Taylor's Pond, Zinzin Bay and Riverside Bay should be treated as part of West Bay. 394 U.S. at 50 n. 65, 53 n. 71. See La. Brief, p. 81, Figure 8.[22] What is more, unless the subsidiary body of water is to be included as a whole, it is very difficult to justify following it only to an arbitrary distance.

Applying these guidelines to East Bay, we submit it is clear that the additional water areas Louisiana would include under its "Method 2" and "Method 3"[23] are not properly part of the main indentation. They consist principally of very small streams or canals in the area of Joseph Bayou at the northern end of Southwest Pass and similar streams and channels in a landform off South Pass adjacent to Oysterville, both shown on Figure 22 of Louisiana's Brief, Appendix I, p. 230.[24] These waterways, very narrow and relatively long, lead to no wider body of water, except the main channels of the Mississippi River—which even the State does not claim as "tributary waters" of East

[22] But see n. 25, *infra*, p. 28.

[23] Methods 2 and 3 include the same waterways. The difference is that Method 3 also counts all intervening lands as water (on the theory that they are islands), while Method 2 does not. See discussion, *infra*, pp. 28–29.

[24] We note that the reduced reproduction of Chart 1272 in Louisiana's Appendix I does not fully show the *low*-water lines and thus tends to exaggerate the relative width of the waterways near Oysterville. For a more accurate picture of that area, we refer the Court to Map 5 of 8 of the set of 54 maps or La. Exh. 353. We deal later (*infra* pp. 30–33) with the claim that these areas have suffered erosion.

Bay. There is, we suggest, no pretext whatever for treating those mere streams as "pockets" of East Bay.

(b) *Treating islands as water.*—We have already noted that Article 7(3) treats "islands" wholly "within an indentation" as part of the water area "of the indentation." When the case was last here we argued that when islands largely block the mouth of an indentation (as in the case of the Barataria Bay-Caminada Bay complex), the question whether it should be viewed as part of another connected indentation must be judged by treating the islands as such, not as water. The Court held otherwise (394 U.S. at 52–53 and n. 71),[25] and we do not re-argue the point.[26] But it is important to stress that the Court was dealing with what were unquestionably

[25] The result of treating the islands at the mouth of the Barataria Bay-Caminada Bay complex as water was to so widen the connection between that indentation and Ascension Bay that the two bodies could "reasonably be deemed a single large indentation even under the United States' approach." 394 U.S. at 53. The same situation obtained with respect to the bays which the Court held part of West Bay. See 394 U.S. at 53 n. 71. Accordingly, those rulings do *not* necessarily indicate that two water bodies connected only by a very narrow passage should be treated as one for semicircle test measurement. But, at all events, no such issue exists with respect to East Bay.

[26] Thus, while the absence of any scale makes the judgment more difficult, we would probably accept the illustration in Louisiana's present Brief, p. 70, Figure 1. But, of course, the "tributary" there shown, relatively wide and short and with a generous opening to the main indentation (once the island is removed), bears no resemblance to the narrow streams and channels which the State claims as tributary waters of East Bay.

true *islands,* not formations so closely related to the mainland as to be properly assimilated to it.

That distinction is critical when we consider Louisiana's Method 3. The State would treat as islands—and therefore as water—land formations of significant size which are separated from the mainland only by very narrow streams or canals. This is, of course, wholly inconsistent with the State's submission for other areas that small islands relatively distant from shore should be deemed a part of the mainland. See Point IV, *infra,* pp. 37–45. But, more important, the claim of island status for the accretions around Joseph Bayou and Oysterville is absurd by any test. It would be more plausible to view all of the Mississippi River Delta as a series of islands, separated by the major passes—with the consequence that all the bays claimed by Louisiana would cease to qualify.[27]

We conclude, in harmony with the Special Master's ruling, that the correct way to apply the semicircle test is by using what Louisiana terms Method 1 and that, accordingly, the small streams and channels in the vicinity of Joseph Bayou and Oysterville cannot be included in the calculation.

[27] Thus, the area between Grand Pass and Southwest Pass might be deemed an island, thereby robbing West Bay—and Ascension Bay—of any southern headland; the area between Southwest Pass and South Pass would be one or more islands, thereby eliminating East Bay; and the same procedure could be followed to the east, viewing Southeast Pass, Northeast Pass, Pass a Loutre, North Pass and Main Pass as separating islands and therefore denying juridical bay status to Garden Island Bay, Redfish Bay, Blind Bay and Bucket Bend Bay.

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2. LAND DETERIORATION OR EROSION IN EAST BAY

Assuming Method 1 must be used, the State alternatively contends that additional water areas must be included in applying the semicircle test to East Bay because neither the set of 54 maps nor the series 1200 charts accurately show the deterioration of certain land masses, especially around Joseph Bayou off Southwest Pass.[28] La. Brief, pp. 80–89. There are several objections to this claim.

(a) We have already noted that Louisiana advanced no such argument when the case was last before the Court. Nor is that all. When the issues were framed for the Special Master in December, 1969, the State did not identify any question with respect to land deterioration not shown on the maps or charts. See Report, p. 58.[29] On the contrary, the State expressly stipulated the correctness of the set of 54 maps with respect to East Bay with the single exception of the right to rely on the 1200 series chart to prove the existence of "Cow Horn Island." See Appendix B of our initial Memorandum, p. 35, para. (d). That would seem to foreclose the claim now advanced.

The State nevertheless embarks on its argument without apology. Presumably it invokes the final paragraph of Part B of the Joint Pretrial Statement,

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[28] But see Figure 7, La. Brief, p. 78, which may be intended to show a like deterioration of land masses off South Pass. This photograph, apparently not taken at mean low tide, is equally objectionable as those purporting to depict the Joseph Bayou area.

[29] Nor did the subsequent Stipulations add this issue. See Report, pp. 62, 63–66.

reprinted at p. 36 of our initial Memorandum. See La. Brief, p. 80 n. 49. To be sure, the parties there reserve the right to introduce evidence showing, among other things, "inland portions of water lines left incomplete on the set of 54 maps, particularly inclusion of tributary waters in measurements for the semicircle test." But that right is expressly qualified: no such evidence shall be "inconsistent" with the set of 54 maps. Thus, to the extent that those maps show water lines in the vicinity of Joseph Bayou, Louisiana is bound by them. And, as it happens, the highwater lines *are* shown. See Map 5 of 8. Accordingly, while the State was free to supply the missing low-water lines, to be consistent with what is already on the map, they must of course be located seaward, not inland—with the result that the water area would be *decreased,* not increased.

(b) We note, moreover, the State here makes an argument inconsistent with its usual insistence that, where a variance from the set of 54 maps is claimed, one must look to the official series 1200 charts. Louisiana cannot have it both ways: the existence of "Cow Horn Island" cannot be deemed proved simply because it was shown on Chart 1272 (until December 1969), despite evidence to the contrary, while the existence of the Joseph Bayou land form is discounted although it appears on the very same chart.

(c) At all events, the evidence submitted is far too equivocal to justify any conclusion that the Joseph Bayou land form has so deteriorated that it should be treated as water. It is not even clear what Louisiana is asserting. Apparently, the allegation is that the land

in the area, which had been gradually growing in size until at least 1956 (La. Brief, pp. 85–86), is now in the process of deteriorating due to canalization. When the erosion is claimed to have begun is none too clear, but most of it is alleged to have happened since the 1959 survey (see La. Brief, pp. 88–89). Yet, as we have seen, it is elsewhere suggested that the 1959 survey was erroneous. Moreover, if the erosion only *began* after 1959, it is difficult to appreciate how Line A can be claimed for the entire period 1956 to the present (see La. Brief, p. 86).

But, whatever the exact nature of the claim, the State's evidence is entirely inadequate to the purpose. It is true that some photographs were submitted early in the hearing.[30] Others[31] were presented far too late, as the Master noted (Report, p. 34). All are objectionable, however, because they are not properly correlated with tidal datum. One cannot know whether the scene depicted truly represents the situation at mean low-tide—the only relevant time.

(d) Finally, as the Master concluded (Report, p. 34), it is impossible to judge whether the additional water claimed would so change the total that Closing A would satisfy the semi-circle test under Method 1—remembering that it fails the test by the wide margin of some 4,700 acres (see La. Brief, p. 75, Figure 6). The State's belated attempt to prove the point (La. Brief, p. 86) is unpersuasive. If one compares the charts for 1944 and 1955 (La. Brief, pp. 71–72, Figures 2 and 3) with the chart for 1969 (La. Brief, p. 73, Figure 4), it is obvious that accretions at places other than Joseph Bayou may well explain why the same closing line no longer satisfies the semicircle test.

[30] See the photographs reproduced at La. Brief, pp. 82–83.

[31] This includes those reproduced at La. Brief, pp. 84–85.

The upshot is that, even if properly received, Louisiana's "deterioration" evidence cannot overcome the bald fact that closing Lines A and B do not meet the semicircle test, properly applied, at least since 1956.

3. OTHER OBJECTIONS

What we have said thus far disposes of Louisiana's proposed Closing Lines A and B for East Bay, at least for the last two decades. There remain for consideration several other lines which apparently satisfy the semicircle test: (1) the variants of Closing Line A up to 1956 (La. Brief, pp. 71–72, Figures 2 and 3, 77, 92–93); (2) Closing Line B^1 (La. Brief, p. 74, Figure 5, 94–102); (3) Closing Line C^1 (La. Brief, p. 96, Figure 12, 101–102); (4) Closing Line C (La. Brief, pp. 102–113); and (5) Closing Line D (La. Brief, p. 114). But—in addition to special defects—all of these lines (including Closing Lines A and B) suffer from the same basic infirmity we discussed in our initial Memorandum (pp. 10–16) with respect to Closing Lines C and D: they are arbitrarily drawn closures devised to avoid certain objections but in no case anchored on proper headlands or realistically "enclosing" inland waters. We do not repeat that submission here, noting only *additional* objections to each of the lines other than Closing Lines C and D.

(a) *Closing Line A.*—We do not share the Master's view that, if they satisfied the semicircle test, Closing Lines A and B "might be accepted, as the area which each of them encloses has all of the other characteristics of a true juridical bay" (Report, p. 31). On the contrary, it seems to us obvious, looking at a chart of the general East Bay area (see La. Brief, p. 73), that the western terminus of Closing Line A is in no sense the "natural entrance point" of the indentation. It will not do to magnify the shoreline at that place and show that some very minor salient is revealed. The line *as a whole* must be seen to divide inland waters from the open sea and that simply cannot be claimed for Closing Line A.

The eastern terminus of Closing Line A is also objectionable—albeit for a different reason. The claimed headland is a detached mudlump, plainly an island, and therefore not allowable (see 394 U.S. at 60–66). It may be that, but for Hurricane Camille, Mudlump 93 would have become incorporated onto the sand spit at the end of South Pass (see La. Brief, Appendix I, at pp. 231–234), but there is no evidence that this has occurred or that, under applicable principles (see Point IV, *infra,* pp. 37–45), the mudlump should be viewed as an extension of the mainland.[32]

[32] We note that the State's choice of the mudlump instead of the sand spit itself was necessary to produce a closing line that would satisfy the semicircle test under Method 3. A line to the spit itself would be both longer (thereby increasing the required semicircle area) and more inland (thereby reducing the available water area behind the line).

(b) *Earlier variants of Closing Line A.*—It is not clear whether the eastern terminus of the pre-1956 lines claimed (see La. Brief, pp. 71–72, Figures 2 and 3) is likewise fixed on a detached mudlump. It is, however, perfectly plain that the western terminus of these lines is very arbitrarily chosen. No one, we submit, would select the point actually chosen as the "natural entrance" of East Bay—unless he had already worked out the semicircle test measurements.

(c) *Closing Line B.*—Besides failing to satisfy the semicircle test, Closing Line B (see La. Brief, p. 73, Figure 4) has two impermissible headlands. The western terminus of the line is the same as that selected for Closing Lines C and D, already discussed in our initial Memorandum (pp. 15–16). In short, the objection is that the salient feature chosen, while a true headland of the pocket bay to the west, is not a natural entrance point for the larger East Bay indentation claimed.

The eastern terminus of Closing Line B suffers the same defect. Moreover, the line cannot be accepted if (as Louisiana insists) "Cow Horn Island" exists *as an extension of the mainland.* A closing line may cross *islands* (and be adjusted accordingly), but it cannot cross a *mainland* formation. See La. Brief, pp. 98–100 n. 58.

(d) *Closing Line B'.*—The Special Master rejected Closing Line B' (La. Brief, p. 74, Figure 5, p. 96, Figure 12) on the double ground that its western terminus did not qualify "as a pronounced headland

helping to enclose landlocked waters" and that its eastern terminus "is located at approximately the center of Cow Horn Island by applying the so-called 'bisector of the angle' method, a technique entirely inappropriate in the physical situation, as there are pronounced headlands in the vicinity" (Report, p. 32). Even assuming we inadvertently misled the Master as to the western terminus (see La. Brief, pp. 95–96), we submit that it can no more qualify than that used for Closing Line B. At all events, however, the eastern terminus is objectionable for the reason given by the Master and, in our view, for the additional reason that Cow Horn Island has not existed above mean low water at any time relevant to this litigation. See our initial Memorandum, pp. 16–22.

(e) *Closing Line C'.*—Finally, we consider Closing Line C' (La. Brief, p. 96, Figure 12), also rejected by the Special Master (Report, p. 32). Again, whether or not the Master was misled, we deem it plain that the point chosen for a western terminus is no more than the headland of a small pocket cover. And, of course (like Closing Lines B' and C), the line depends on the challenged finding that Cow Horn Island exists (or existed for some relevant period).

4. SUMMARY

We repeat that the basic defect of *all* the State's proposed East Bay closing lines is that they are wholly artificial contrivances for defining a juridical bay which simply does not exist. In all cases, one or both claimed headlands plainly do not qualify as the

"natural entrance" of the identation claimed. Beyond that, Closing Lines A and B must be rejected as failing the semicircle test and Closing Lines B', C', and C are each objectionable as depending on the unsupported finding that "Cow Horn Island" existed for some relevant period. This leaves only the variants of Closing Line A until 1956—which have perhaps the most obviously arbitrary western terminus—and Closing Line D. This last is no doubt the least objectionable, but, even here, as we fully argued in our initial Memorandum, we are confronted with an *ex post facto* rationalization, not a line that naturally defines the limits of an inland bay. The obvious truth is that East Bay—albeit it is so labelled on charts—is no more a juridical bay than San Luis Obispo Bay or Santa Monica Bay. See *United States* v. *California,* 381 U.S. 139, 143–145, nn. 3 and 6, 169–170.

IV

LOUISIANA'S FOURTH EXCEPTION: ISLANDS AS PART OF THE MAINLAND

The State devotes considerable space to the question whether islands near the shore ought to be treated as extensions of the mainland (La. Brief, pp. 116–143). Most of the argument, however, consists of generalities; there is very little discussion of concrete situations. The reason for this approach is obvious when we consult the maps and note how far one must strain natural meaning to view any of the islands or mudlumps claimed by the State as "so closely linked to

the mainland as realistically to be assimilated to it" (394 U.S. at 66). The truth is that, in each case, as the Master correctly found, the islands are in no sense extensions of the mainland unless one invents very novel rules for the Louisiana coast. Accordingly, we follow the State's sequence and first discuss the governing principles.

1. GENERAL PRINCIPLES

The issue whether any particular island, or group of islands, should be treated as part of the mainland arises because, at several places, the State attempts to draw a more seaward bay closing line by anchoring it at one end or both on an island or low-tide elevation—which is permissible only if the formation can be deemed an extension of the mainland. See 394 U.S. at 60–66. We must, therefore, consider the test which governs whether a land form surrounded by water—technically an "island"—ought to be considered a part of the mainland.

The Court itself has given us the basic guidelines: relevant factors include the island's "size, its distance from the mainland, the depth and utility of the intervening waters, the shape of the island, and its relationship to the configuration or curvature of the coast." 394 U.S. at 66. These are clear enough criteria. The best candidate for mainland assimilation is a large land form, separated from the shore only by a narrow, shallow, impassable ribbon of water, and so shaped and located that it appears to be a mere continuation of the coast. The worst candidate is a

small island, detached from the mainland by a relatively wide channel, and so situated that it contributes nothing to the general direction of the coastline. And, of course, there are closer cases in which the island enjoys some, but not all, of the mainland extension characteristics.

To be sure, the application of these guidelines is not always easy. But the Court has not left us altogether at sea. It is, for instance, settled that the St. Bernard Marshes and the like formation just north of Caillou Boca should be treated as mainland despite the many waterways that divide those areas into technical islands. 394 U.S. at 63, 65–66. On the other hand, the Court has ruled that the Isles Dernieres and the string of islands shielding the entrances of Barataria Bay, Bob Taylor's Pond, Zinzin Bay and Riverside Bay, must be viewed as true islands—although some of these "fringing islands", which are quite large and separated from the mainland by relatively narrow and shallow water passages, can be viewed as continuing the general coastline. 394 U.S. at 52, 53 n. 71, 55, 58–59 n. 79, 66–67 n. 87, 67 n. 88.[33] These examples, we submit, were properly followed by the Master in rejecting the State's mainland assimilation claims. Indeed, the case for treating the island immediately to the east of Caminada Pass, southeast of Caminada Bay (see

[33] We take it for granted that the Court would not have discussed the problems of how to draw a closing line when "islands" are situated at the mouth of an indentation with particular reference to these areas if it deemed them true extensions of the mainland. Nor do we suppose the Court would treat as water for semicircle measurement purposes islands which should be deemed part of the mainland.

Drawing 4, opposite page 26 of our initial Memorandum) as an extension of the mainland is so much stronger than any of the present claims that it is difficult to view the matter as still open.

What, then, is Louisiana's response? It is largely confined to stressing the *fluvial origin* of the islands and mudlumps it would treat as portions of the mainland. The Court, it is true, expressly noted that this is "one consideration relevant to the determination of whether [islands] are so closely tied to the mainland as realistically to be considered part of it." 394 U.S. at 65 n. 84. But, at the same time, the Court was careful to caution that by citing *The "Anna"* and other early authorities it was not "suggesting that, under the now controlling Convention on the Territorial Sea and the Contiguous Zone, every Mississippi River Delta mudlump or other insular formation is a part of the coast." *Ibid.* Plainly, an island is not to be deemed part of the mainland today simply because it once was—or because it may be at some time in the future. The upshot, we submit, is that every island or low-tide elevation claimed as an extension of the mainland must satisfy the normal criteria, albeit those tests will be somewhat more leniently applied in the case of a formation of fluvial origin.

With these principles in mind, we turn briefly to the particular areas where the State seeks to anchor a bay closing line on an island or low-tide elevation on the premise that it is realistically part of the mainland. We follow Louisiana in proceeding from west to east.

2. ATCHAFALAYA BAY

In this area, Louisiana claims islands or low-tide elevations as headlands of the bay both on the west and the east. We shall consider these separately. At the outset, however, it may be well to point out that the difference between the parties, while important in principle, has only a small practical effect. This is because the State's closing line exceeds the maximum 24 miles and a fallback line must accordingly be substituted, which is very near the United States line. See La. Brief, Appendix I, p. 309, Figure 44.[34]

(a) *The Shell Keys.*—On the west, the State would anchor the closing line of Atchafalaya Bay south of Marsh Island in a group of shell reefs associated with the Shell Keys. See La. Brief, Appendix I, p. 217, Figure 17.[35] That is objectionable in our view, both because (1) these reefs cannot be deemed part of the mainland (or part of Marsh Island),[36] and (2) the reefs do not qualify as the natural entrance of the bay, which is more appropriately located at South Point on Marsh Island. See Report, pp. 52–53.

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[34] The United States line, on the west, ends at the prominent point (South Point) just to the north of the State's fallback line.

[35] Properly speaking, the Shell Keys are those few true islands at the southwest of the complex. But there are, as Louisiana points out, more extensive low-tide elevations nearer Marsh Island.

[36] It does not matter whether Marsh Island itself is viewed as an extension of the mainland or an island intersected by a closing line drawn to the eastern headland of Southwest Pass to the west of Marsh Island. In either case, the line must be adjusted to meet the natural headland of Marsh Island on the east. See 394 U.S. at 55–60.

Both points, we suggest, are quickly resolved by inspecting the map. The claim that the shell reefs are part of the mainland is rebutted when we note the relatively great water crossings between the reefs and compare the total land and water areas within the complex. See La. Brief, Appendix I, p. 217, Figure 17. Nor is it irrelevant that most of the reefs are mere low-tide elevations. For, while ruling that a low-tide elevation, like an island, may be deemed an extension of the mainland, the Court noted that "[l]ow-tide elevations obviously do not so closely tie the enclosed waters to the land * * *." 394 U.S. at 60 n. 80. It would be extravagant indeed to view this sparse complex of mere reefs as a part of the mainland.

An independent objection, as we have noted, is that normal headland principles forbid fixing the western headland of Atchafalaya Bay at some point within the Shell Key reefs. As the Master concluded, the natural closure for the bay on the west is at South Point on Marsh Island, a pronounced headland which is the obvious complement of Point au Fer on the east. See La. Brief, Appendix I, p. 309, Figure 44, or the map attached to the Court's opinion, 394 U.S. opposite p. 78.

(b) *Low-tide elevations off Point au Fer.*—Instead of closing Atchafalaya Bay at the east by a line proceeding directly to Point au Fer, the State would move the line seaward to include a small cluster of low-tide elevations to the west. See La. Brief, p. 140; Appendix I, pp. 308–310. Presumably acknowledging that low-tide elevations—as contrasted with islands—

can in no event affect a bay-closing line *unless they are properly viewed as part of the mainland,* Louisiana asserts that the elevations in question are an extension of the Point au Fer mainland. The Master, rightly in our view, rejected this contention. Report, pp. 52–53.

There is no need to elaborate. At low tide the total exposed surface of the group of elevations on which Louisiana relies cannot exceed a quarter of an acre and yet the nearest is some 2500 feet from the mainland. Nor do the elevations in any sense continue the arm of Point au Fer: they stand very much on their own in the sea. See Map 1 of 5. In these circumstances, it requires more than submerged oyster beds to so closely tie the formations to the mainland as to justify deeming them a part of it. See La. Brief, p. 140.

3. GARDEN ISLAND BAY/REDFISH BAY

Louisiana would place the northern terminus of this bay complex on a minute islet, even at low tide only 300 feet long, but approximately 5,000 feet from the mainland. See La. Brief, Appendix I, p. 268, Figure 34.[37] In our view, those facts alone required the ruling that the mudlump—whatever its origin—can no longer be viewed as part of the mainland. See Report, pp. 40–42.

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[37] The Louisiana line is anchored on the southernmost of the islands depicted on this map, while the terminus of the United States line is the much larger island at the north which is detached from the mainland only by a mere 30-foot channel.

Louisiana seeks to avoid that obvious conclusion, first, by indulging in a kind of leapfrog exercise from islets nearer shore, and, second, by claiming that the group of islands forms a "portico" to the mainland. Neither theory can avail in this situation. The initial hurdle is that the nearest islet (other than the one we concede as an extension of the mainland) is some 1600 feet from the mainland. Moreover, the group is separated by water crossings which, in all but one case, far exceed the width of the islets, even at low tide. See La. Brief, Appendix I, p. 268, Figure 34.

As for the "portico" claim, it is simply preposterous when one considers the entire bay complex. Even ignoring the large water gaps between the islets, the alleged "screen" covers less than one mile of a bay closing line of more than six miles. Nor does it follow the same direction. See Report, p. 42.

4. BLIND BAY

To enlarge Blind Bay in such a way that a closing line across it affects the three-mile grant, the State claims that mudlumps off Pass a Loutre at the north and off Southeast Pass at the south should be deemed extensions of the mainland. See La. Exh. 353; Map 2 of 8. In both cases, the mudlumps are so small in relation to their distance from the shore that Louisiana wisely refrains from any assertion that one would view them as part of the mainland simply by looking at the map. Instead, what is stressed is the fluvial origin of the islets and the prospect that, one day, they will be reunited to the shore. See La. Brief,

Appendix I, pp. 260–262. But neither the past nor the uncertain future can govern this litigation. We submit that the Master was right in concluding that, *for the present,* these mudlumps are no part of the mainland. Report, p. 40.

There is, moreover, an independent objection to the proposed closing line of Blind Bay. As the Master noted (Report, p. 38), a large part of the water area Louisiana would include is obviously open sea, south of what is labelled "Blind Bay" on all charts. Even if the mudlumps off Pass a Loutre were deemed an extension of the mainland, the southern natural entrance point for the only indentation in the vicinity—Blind Bay—would be at Northeast Pass, not Southeast Pass. The waters to the south are not arguably "landlocked."

5. BUCKET BEND BAY

Finally, Louisiana would place the southeastern terminus of Bucket Bend Bay on a mudlump some 1900 feet from the nearest mainland, or, alternatively, one 600 feet away. See La. Brief, Appendix I, p. 259, Figure 29. Again, the elevations are far too distant from the mainland—considering their size and position—to be deemed a part of the mainland. This is made particularly clear when one considers the ratio of water to "land." At best, the intervening water area is more than 15 times the area of the elevations at low tide. See U.S. Exh. 349, sheet 3. We submit the Master was plainly right in rejecting this claim. Report, pp. 35–38.

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V

LOUISIANA'S FIFTH EXCEPTION: CARTOGRAPHIC AND SURVEY QUESTIONS

As the State itself notes, many of the so-called "cartographic or surveying oversights or errors" collected in this short section of its Brief (pp. 144–145) have already been discussed elsewhere. Thus, issues relating to "Cow Horn Island" and the low-water areas claimed near Pass du Bois are fully treated in our initial Memorandum (pp. 16–22, 22–24). So, also, we have discussed the alleged erosion near Joseph Bayou and accretions of Caillou Bay in other parts of the present Memorandum (pp. 30–33, *supra,* and pp. 47–52, *infra*). The only matters remaining concern (1) the spoil bank off Pass Tante Phine and (2) mudlumps off South Pass.

These are relatively minor issues. The formations claimed do not affect any bay closing lines. They would merely "bulge out" the 3-mile line at the named places. Moreover, the question is not *whether* the formations ever existed, but for precisely *what periods.* At Pass Tante Phine, the Master accepted our submission as to the dates of appearance and disappearance of the spoil bank (Report, p. 47), paras. (d) and (e). For the South Pass mudlumps, the Master made a ruling substantially more favorable to the State (Report, pp. 43–44). On our side, we are content to accept the Master's conclusions. Nor has the State lodged more than a *pro forma* protest. These are peculiarly factual issues which do not lend themselves to argument here.

Of course, the Court cannot abdicate its responsibilities in an original case, but, on these two very minor points, we suggest the Master's findings may safely be endorsed without further debate.

VI

LOUISIANA'S SIXTH EXCEPTION: CAILLOU BAY

If we correctly construe its present submission, the State now concedes that Caillou Bay qualifies as a juridical bay only if the western Isles Denieres properly can be deemed an extension of the mainland. That is indeed the single theory that could support the result sought, for this Court has already settled that true islands cannot form a bay (394 U.S. at 66–71) and, when the Isles Dernieres are discounted, there is obviously no indentation of the coast sufficient to constitute a bay. See Drawing 1, *infra,* following p. 48, and Report, p. 51. Yet, unless a bay exists, there can be no question of using "intersected islands" or "fringing islands" to extend the bay seaward.

The sole issue, then, is whether the western part of the Isles Dernieres chain should be treated as part of the mainland. The short answer to that question is that the Court has already decided it. See 394 U.S. 66–67 nn. 87–88; Report, pp. 49–50. While acknowledging this, Louisiana pleads for reargument, essentially advancing three considerations: (1) the Court overlooked the State's submission in 1968; (2) the late change of position by the United States placed Louisiana at an unfair disadvantage; and (3) at all events,

the issue ought to be reconsidered in light of the Master's indication that he disagrees with the Court's ruling. We briefly address each of these points.

1. Louisiana is not without courage in taxing the Court with misunderstanding its 1968 submission that the western Isles Dernieres should be considered a part of the mainland. At the time, the State burdened the Court with 625 pages, in 4 volumes, plus 13 volumes of maps, in which every point was argued and illustrated at length. Out of all that material, Louisiana now points to an ambiguous half-sentence, buried in the wholly different argument of its Reply Brief [38] to the effect that the United States ought to be held bound by the Chapman Line at Caillou Bay "irrespective of whether it is a true bay." La. Brief, pp. 147–148. One might well take the view that the State has rightly paid the price of undue prolixity. Moreover, it is not even clear that the reference to the Isles Dernieres chain as a "natural extension of the mainland" in the 1968 brief was anything more than an alternative formulation of the rejected "portico" theory.[39] See 394 U.S. at 66–71. Certainly, the only permissible

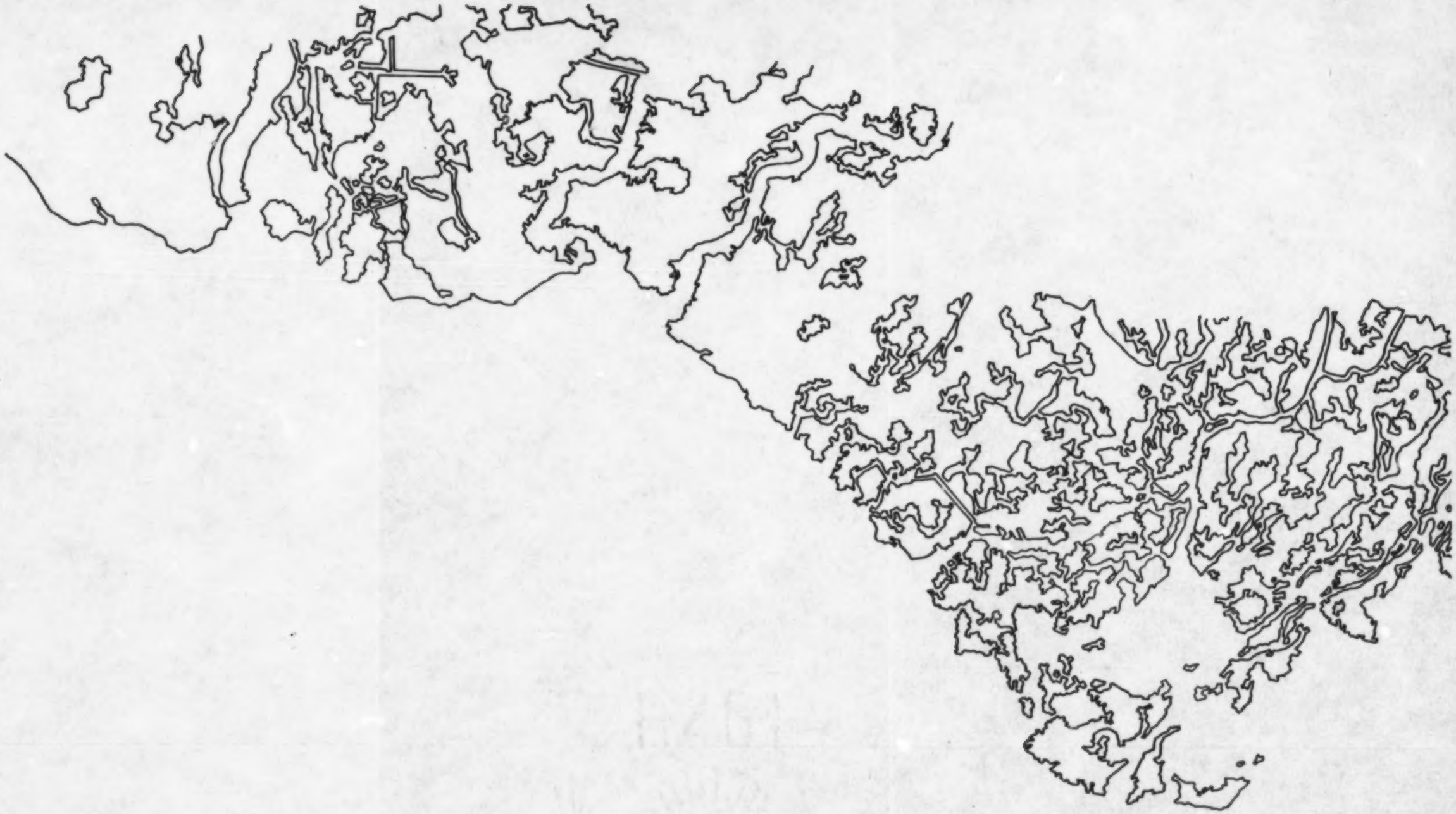
[38] There was no suggestion in the State's original brief that the western Isles Dernieres constituted a mainland peninsula, rather than a chain of islands. See La. Brief in Support of Motion, etc., October Term, 1968, pp. 295–303.

[39] Indeed, in the italicized language now reproduced (La. Brief, p. 148), the State seems to be arguing that the islands are so closely connected to *each other*—not to the mainland—that they "form a portico to the mainland" and are, for that reason, to be treated as "an extension of the mainland."

proposition cannot be said to have been "argued". At all events, the Court did not rest its conclusion on Louisiana's submission: the opinion expressly states, "we agree that none of the islands would fit that description." 394 U.S. at 67 n. 88.

2. The State's estoppel point, once again, is no more than re-argument of a matter already adjudicated, with full awareness of the government's change of position. 394 U.S. at 73–74 n. 97, and 66–67 n. 87. Presumably, the State quarrels with the Court's statement that "Louisiana has not relied to its detriment on the [earlier] concession [that Caillou Bay is inland water]." 394 U.S. at 73 n. 97. Let us examine that claim.

First, the State points out that, until 1968, it was permitted to grant mineral leases and receive the revenues from the area, without any warning that it might later have to account (La. Brief, p. 63 n. 39). Needless to say, it is no disadvantage to have the use of monies to which one is not entitled. Nor should the ultimate accounting create any undue embarrassment. The State has now been on notice for 7 years that it may be required to repay royalties received from Caillou Bay before 1968. In the interim, there have been disbursements to Louisiana exceeding any amount which probably is due on this score, which the State should have set aside against the eventuality of losing its Caillou Bay claim. And, at the end of the day, Louisiana may be entitled to disbursements from



0 1 2 3

Nautical Miles

DRAWING 1

the escrow fund sufficient to offset its Caillou Bay debt.[40]

Second, Louisiana asserts that the federal change of position has worked a "surveying prejudice," in that no special attention was given to low-water lines on the landward side of the Isles Dernieres in the 1950's. See La. Brief, pp. 148–150. This is a most extraordinary claim in light of the 6 years that elapsed between notice of the new federal position and the closing of the record before the Master, Louisiana's voluntary acceptance of the set of 54 maps for the area in December 1969, and the fact that the State was permitted, and did, present evidence of additional land behind the islands, which was not opposed by the United States and was accepted by the Master. See Report, p. 51.[41] It is too late in the day to com-

[40] While we do not believe the justice of the case requires it, the State's argument would, at best, suggest a waiver of accounting for monies received from Caillou Bay (defined by the Chapman Line) until 1968, when it was first put on notice of the federal claim. There is plainly no basis for a contention that Louisiana has suffered any prejudice since that time.

[41] Part B of the Joint Pretrial Statement filed with the Special Master in December 1969 (reproduced as Appendix B of our initial Memorandum, pp. 35–36) stipulated that, with certain exceptions, the parties accepted as correct the high and low-water lines shown on the set of 54 maps, but allowed further evidence "not inconsistent with those maps" to show, among other things, "inland portions of water lines left incomplete on the set of 54 maps." Because the low-water lines on the landward side of the western Isles Dernieres were not indicated on the stipulated maps, Louisiana was free to supply them and did so. What was objected to and disallowed was evidence of islands wholly missing from the set of 54 maps or inconsistent water lines—because the State, although free to do so in December 1969, did not reserve that right.

plain: the State might easily have fully reserved its right to present new evidence and developed it (as both parties did for other areas) in the generous time allowed.

What is more, it appears that Louisiana did make some form of re-survey on its own. And, while its failure to specify an exception for Caillou Bay rendered some of its evidence inadmissible, the new map does not affect the result as the Master found (Report, p. 51). As our illustrations show, the western Isles Dernieres are no more closely tied to the mainland when we add the new land areas claimed by Louisiana (Drawing 3, following p. 52, second map) then they are as depicted on the set of 54 maps (Drawing 2, following p. 52, first map). Although the islands may be more closely tied to one another, the critical separation of the entire chain from the mainland by the relatively deep channel of Caillou Boca remains unchanged. That is presumably what led the Court to conclude that the Isles Dernieres could not be deemed an extension of the mainland and there is no occasion to re-open that ruling.

3. Louisiana nevertheless asks the Court to reconsider its holding. As we have just seen, this cannot be on the ground of fresh evidence, which, as the Master found, is in part inadmissible and at all events irrelevant. It must be on the sole basis that the Master gratuitously expressed his disagreement with the Court's ruling. See Report, pp. 50–51.

For our part, we submit the Court ought not accept the invitation. The case presents sufficient issues without undertaking reconsideration of these already de-

cided. But, if the Court determines to look at the matter anew, we must repeat what we have just said: however closely the several islands of the Isles Dernieres may be connected to one another, the chain is clearly separated from the mainland. The smallest gap is at Caillou Boca, a very plainly defined channel, marked by buoys, some 14 or 15 feet deep and almost ⅓ mile wide—which is in no way narrowed even if one accepts Louisiana's new evidence. See Drawings 2 and 3, following p. 52.

In those circumstances, we simply fail to understand how the Master could suggest that the Isles Dernieres should be assimilated to the mainland, except by succumbing to the State's repeated appeal to find a juridical bay "somehow" (La. 1968 Reply Brief, p. 122, reproduced in the present La. Brief, p. 148) or "by some means" (La. Memorandum Presenting Additional Data to the Special Master, p. 61). Unless novel rules are to be invented for this area,[42] the Court's conclusion that the Isles Dernieres chain is not part of the mainland must stand, with the consequence that the waters labelled Caillou Bay do not constitute a true bay.

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[42] In this one area, the Master, we submit, has grossly departed from the sound island-assimilation principles followed elsewhere—notably at Bucket Bend Bay (Report, pp. 35–38), at Blind Bay (Report, pp. 38–40), at the Garden Island Bay/Redfish Bay complex (Report, pp. 40–42), and at Atchafalaya Bay (Report, pp. 52–53). See Point IV, *supra*, pp. 37–45.

CONCLUSION

For the foregoing reasons and those stated in our initial Memorandum, the Special Master's determinations should be confirmed, with only the following three exceptions:

(1) Contrary to the Master's determination, no subsidiary bay whose closing line affects the Submerged Lands Act grant has existed for any period relevant to this litigation;

(2) Contrary to the Master's determination, the low-water elevations near Pass du Bois did not exist until December 6, 1969; and,

(3) Contrary to the Master's determination, "Ascension Bay" is not an overlarge juridical bay.

Respectfully submitted.

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JANUARY 1975.

CAILLOU BAY

ISLES DERNIERES

Land above water level
Land at or near water level

Nautical Miles

DRAWING 3

CAILLOU BAY

ISLES DERNIERES

0 1 2 3 4

Nautical Miles

DRAWING 2

APPENDIX A

Appendix A being a document submitted by the United States in these proceeding at the invitation of the special master

No. 9, Original

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BEFORE THE SPECIAL MASTER

SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE UNITED STATES WITH RESPECT TO LOUISIANA'S HISTORIC INLAND WATERS CLAIMS

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October Term, 1973

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v.
STATE OF LOUISIANA

BEFORE THE SPECIAL MASTER

SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE UNITED STATES WITH RESPECT TO LOUISIANA'S HISTORIC INLAND WATERS CLAIMS

I

HISTORIC INLAND WATER CLAIMS

A. INTRODUCTORY

1. (La. C. 11–12, 15–25; see also La. F. 14, 19–20, 44–52, 53–61).[1] In order to prevail with respect to any claim of historic inland water, Louisiana must show:

[1] For the convenience of the Special Master, we have noted parenthetically (where possible) the finding or conclusion proposed by Louisiana which corresponds to each of our own proposed findings and conclusions. "La. F." refers to one or more of Louisiana's "Findings of Fact" (pp. 3–28 of the State's submission of October 29, 1973); "La. C." refers to one or more of the separately numbered "Conclusions of Law" proposed by Louisiana (pp. 29–42 of the same submission). For our part, we have not distinguished between "findings of fact" and "conclusions of law," believing that, in the particular context of the historic inland water claims, factual and legal questions are so intertwined as to make the attempt to separate them somewhat artificial.

a. That there has been governmental exercise of authority of such a character that foreign nations were put on notice that the area was claimed as inland waters of the United States, not merely as part of the American territorial sea or part of a contiguous zone or the high seas beyond with respect to which more limited rights might be asserted. See 394 U.S. 11 at 23–32, esp. nn. 28–30 and 76, n. 103.

b. That such exercise of authority has been notorious and continued over a long period. See 394 U.S. at 23–24 and n. 27.

c. That foreign nations have at least impliedly acquiesced in such exercise of authority. See 394 U.S. at 23–24 and n. 27; *United States* v. *California,* 381 U.S. 139, 172. Mere absence of protest is insufficient at least where there has been no unambiguous and notorious inland water claim.

2. (La. C. 26–27, 29, 31–33). Louisiana may invoke both federal and state actions for this purpose, notwithstanding the federal government's present disclaimer (394 U.S. at 76–77, and n. 104); but past state activities are relevant only "to the extent [that] the United States could [—albeit it does not—] rely on [them] in advancing such a claim" to historic inland waters. 394 U.S. at 77–78.

3. (La. C. 29, 31). Louisiana may not rely on any of its actions which were, at the time, "repudiated by or inimical to the interest of the national sovereign." 394 U.S. at 76, n. 103.

4. (La. F. 65–66; La. C. 13–14, 26–27). In light of the official disclaimer by the United States of any

historic inland waters along the Louisiana coast, the State has a heavy burden of proof. See 394 U.S. at 76–77.

B. EAST BAY

5. Louisiana presses its strongest case for historic inland water in the area of East Bay. In support of that claim Louisiana has submitted material purporting to show: (a) that the physical configuration of East Bay once satisfied the then international law rule followed by the United States for a juridical bay; (b) that East Bay is geographically and economically an integral part of the State; (c) that the federal government took actions in the past amounting to a claim that East Bay was inland water; (d) that state activities affecting the Bay would support a claim—which the United States could assert against foreign nations if it chose—that East Bay is an historic inland bay.

6. The United States has at all times in this litigation, since the filing of the first complaint in 1948, asserted that East Bay is not inland water within the operative meaning of that term in these proceedings.

a. The so-called "Chapman Line" of 1950, interpreting the decree of that year which recognized Louisiana's retention of "inland waters" (340 U.S. 899, para. 1), excluded East Bay.

b. In 1956, after the passage of the Submerged Lands Act which granted coastal States a 3-mile belt beyond "the line marking the seaward limit of inland waters" (43 U.S.C. 1301(c)), the United States obtained an injunction against mineral operations in East Bay more than 3 miles from shore. See 351 U.S. 978.

c. The Interim Agreement of that year reflected the federal claim to the resources of the seabed of East Bay more than 3 miles from shore. Agreement between the United States and Louisiana of October 12, 1956.

d. Since 1956, the United States has consistently asserted that East Bay is not inland water—historical or juridical—under the Submerged Lands Act (43 U.S.C. 1301(c)), the Court's 1960 decree (364 U.S. 202, para. 1), the Convention on the Territorial Sea and the Contiguous Zone (15 U.S.T. 1607, T.I.A.S. 5634, Art. 7), or the Court's 1969 opinion (394 U.S. 11, 74–78). See also, 382 U.S. 288, 291, para. 3(c).

7. (La. F. 65–66). Beyond its stance in this litigation, the United States has, through responsible officers of the Department of State, officially disclaimed East Bay as inland waters of the United States. See 394 U.S. at 76–77; U.S. Exs. 108–114 and 4160.

The old bay under the old law

8. (La. F. 3, 16, 62–64). Before 1900, East Bay appears to have had such a configuration that its entrance did not exceed 10 miles in width. Since at least 1918, the entrance of the Bay has been more than 10 miles wide. La. Ex. 23.

9. (La. F. 16, 64). The evidence does not indicate that the United States adhered to a 10-mile closing rule before 1930, or that such a rule was settled in international law even as late as 1953. See *United*

States v. *California,* 381 U.S. 139, 163–164; *Fisheries Case* (*United Kingdom* v. *Norway*), I.C.J. Reports (1951) 116, 131. Nevertheless, if one applies the 10-mile closing rule until 1958, and the Convention on the Territorial Sea, and the Contiguous Zone thereafter, East Bay, if once a true inland bay, ceased to be a juridical bay ever since at least 1918. See the Chapman Line of 1950 which did not enclose East Bay; 394 U.S. at 53.

10. (La. C. 37, 38). The normal consequence of geographical changes along a seacoast, whether natural or artificial, is to alter the legal coastline. 394 U.S. at 32–34. See also, *Texas Boundary Case,* 394 U.S. 1, 3–6; *United States* v. *California, supra,* 381 U.S. at 176–177. That principle is fully applicable to a former juridical bay, like East Bay, which, because of erosion or other geographical changes, ceases to qualify as such.

11. (La. C. 39, 40). Exceptionally, an area which loses its status as a juridical bay may nevertheless remain inland water if the coastal nation continues, after the geographical change, to exercise such dominion over the area as to support a claim to historic inland waters. With respect to East Bay, however, the evidence of continued and notorious exercise of inland water authority is lacking. See paras. 16–28, *infra.*

Geographic and economic considerations

12. Geography and economic interests are not factors recognized in international law as significant to an historic bay claim. *Juridical Regime of Historic Waters, Including Historic Bays.* But in any event Louisiana's claim is not persuasive.

13. (La. F. 1, 2, 5, 8). East Bay is not, as a matter of geography, peculiarly "inland." Far from having the appearance of an "inland lake," it is a triangular area, the whole of whose base is the open waters of the Gulf of Mexico. At all events, East Bay does not meet the objective test of the Convention (394 U.S. at 53), and subjective impressions are legally irrelevant.

14. (La. F. 5, 6). It is legally irrelevant that all lands bordering East Bay and all the tributaries entering it belong to Louisiana. That was the situation of Santa Monica Bay and San Pedro Bay, which the Court nevertheless found did not qualify as juridical bays or historic inland waters. *United States* v. *California, supra,* 381 U.S. at 170, 173. See also, Convention on the Territorial Sea and the Contiguous Zone, *supra,* Art. 7(1), and *Juridical Regime of Historic Waters, Including Historic Bays.*

15. (La. F. 7). It is equally irrelevant that East Bay is not "a waterway for intercourse between nations."

a. If East Bay were an "international strait," that might preclude its being treated as inland water. See *Corfu Channel* case [1949] I.C.J. Rep. 4.

b. But the converse is not true. Many maritime areas in the world, whether because of shallow waters, submerged obstacles to navigation, or remoteness from the commercial shipping lanes, are similarly not international "waterways." They are not, on that account, deemed inland waters. See *United States* v. *California, supra,* 381 U.S. at 172.

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16. (La. F. 9, 12). Louisiana's assertion that "from the beginning of recorded history East Bay has been vital to the economic interest of those persons inhabiting its shores" is somewhat exaggerated, and in any event irrelevant. See *Juridical Regime of Historic Waters, Including Historic Bays.*

a. There are probably less than one hundred people living on the shores of the Bay, most of them federal employees of the Coast Guard at "Port Eads" on South Pass, "Burrwood" on Southwest Pass and "Pilot Town" at the head of the two Passes.

b. Nor are the resources of the Bay more than 3 miles from shore important to the economic life of the State, except only for oil and gas operations, all of which have been conducted with notice of the federal claim to the area. (See also findings 23–27.)

c. Any state historic claim more than 3 miles from shore in East Bay based on the self-inflicted dependence on mineral revenues has been impliedly rejected by the Court, which did not accept Mr. Justice Black's dissenting views. See 363 U.S. at 98–100; 394 U.S. at 79 n. 2, 84.

Federal actions

17. (La. F. 17). During the 19th century, the United States surveyed, platted and patented to individuals lands on the banks of South Pass, Grand Pass (since eroded) and Southwest Pass. These actions, however, give no indication that the federal government viewed the water of East Bay as inland. La. Exs. 21, 93 and 94.

18. (La. F. 25). Pursuant to an Act of Congress of 1895, officials of the United States established the so-called "Coast Guard Line," landward from which the Inland Rules of Navigation would be applicable, and that line encloses the whole of East Bay. However, the Court itself has expressly rejected the contention that this line defines the seaward limit of inland waters for the purposes of this case. 394 U.S. at 19–32.

19. (La. F. 18–23). In 1907, the Tern Island Reservation was created by Executive Order and the accompanying chart indicates an oval broken line drawn in the water and encircling the entire Delta area, including East Bay. However, the text of the Executive Order expressly reserves only "all small islets commonly called "mudlumps" located within the zone indicated, and there is no indication that the United States claimed the intervening water areas (any more than the mainland areas encompassed by the line). *Cf.* 363 U.S. at 69–70.

20. (La. F. 26–28). The National Prohibition Act of 1919, 41 Stat. 305, and regulations and instructions issued thereunder in the 1920's, defined the "territorial waters of the United States" for prohibition purposes as including "bays * * * which, at their entrances, are so surrounded by the lands of the United States as to be reasonably regarded as geographically a part thereof, regardless of the distance between the opening headlands."

a. However, since the only examples given—Chesapeake Bay and Delaware Bay—are obviously far more enclosed at their entrances than East Bay, it is very doubtful that East Bay would have qualified.

b. At all events, an assertion of jurisdiction merely for the purpose of controlling smuggling would be permissible far seaward of inland waters, indeed even beyond the usual 3-mile territorial sea, and therefore does not amount to a claim that the waters affected are inland or territorial. See 363 U.S. 1, at 34 and n. 60; 394 U.S. at 23 n. 26. See also Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1607, T.I.A.S. 5639, Art. 24(1).

21. (La. F. 30). In connection with the 1940 census conducted by the United States Department of Commerce, the geographic area of the United States was measured and charts showing the method used show East Bay included as "state water." This evidence is ambiguous, at best, since East Bay is expressly excluded by the Department of Commerce from the category of "inland water." See Proudfoot, *Measurement of Geographic Area* (U.S. Dept. of Commerce, 1940), La. Ex. 52, pp. 37–45, 117. Moreover, the procedure followed does not suggest that East Bay was included as an "historic bay," but, rather, at a true bay under what appears to be an erroneous application of the 10-mile closing rule. See *id.* at 33.

22. (La. F. 31). Louisiana's contention that the Coast Guard has asserted jurisdiction in East Bay as inland waters of the United States, by construing the authority of the Captain of the Port of New Orleans and the New Orleans Inspection Zone as encompassing all of East Bay, is not proved on the record.

a. For some purposes, Coast Guard authority expressly extends beyond United States territorial waters

to the so-called "inland water line" (see, *e.g.*, 33 U.S.C. 151; 33 U.S.C. 152), and for other purposes, it extends even beyond that line (see, *e.g.*, 46 U.S.C. 88; 46 U.S.C. 22a; 46 U.S.C. 367). See also, 33 C.F.R. 2.10–1 (b) and (c).

b. Moreover, international law recognizes the propriety of many activities undertaken by the Coast Guard beyond American territorial waters. See Convention on the High Seas, *supra*, Art. 7; Convention on the Territorial Sea and the Contiguous Zone, *supra*, Art. 24(a); 394 U.S. at 23, n. 26.

State actions

23. (La. F. 32–35). For about a century, Louisiana has legislatively asserted a right to control oyste[illegible]g in all Louisiana waters, including all "bays" bordering on the Gulf of Mexico, and, during the whole of the century "East Bay" has been so designated on maps of Louisiana.

a. This is not dispositive, however, of Louisiana's intent to claim East Bay as "inland water"—any more than the omission of "Ascension Bay" from most maps forecloses Louisiana's claim to that body of water.

b. It may be that the Louisiana legislature meant only to assert authority over true bays, recognized by domestic and international law of the time, in which event East Bay would have been excluded for at least most of the century. See para. 9, *supra*.

c. At all events, as the Supreme Court held with regard to Monterey Bay, a mere legislative declara-

tion, especially an ambiguous one, cannot create historic title. *United States* v. *California, supra,* 381 U.S. at 174.

24. (La. F. 35–36). Louisiana has granted exclusive oyster leases in East Bay, but never more seaward than 3 miles from shore. See La. Ex. 67.

a. In the absence of inconsistent federal regulation, that assertion of jurisdiction within the territorial sea was probably authorized under domestic law even before the passage of the Submerged Lands Act of 1953 (which now confirms state authority within the 3-mile belt). See *McCready* v. *Virginia,* 94 U.S. 391, 394–395; *Manchester* v. *Massachusetts,* 139 U.S. 240, 258; *Johnson* v. *Haydel,* 278 U.S. 16; *Toomer* v. *Witsell,* 334 U.S. 285, 393.

b. At all events, these leases would not support a claim of historic inland waters vis-a-vis foreign nations, since they affected only American territorial waters where, as a matter of international law, the United States (whether directly or through a member State) could exercise that sort of exclusive authority, whether the waters were viewed as inland or part of the 3-mile territorial sea. See *Toomer* v. *Witsell, supra,* 334 U.S. at 393.

25. (La. F. 38–42). Louisiana has, for more than half a century, regulated shrimping and fishing along its coast, including at least portions of East Bay. Insofar as such regulation did not extend more than 3 miles from shore, it proves no claim to historic inland waters.

a. Regulation of fisheries to that distance has traditionally been deemed a prerogative of coastal nations

within their territorial seas beyond inland waters. See *United States* v. *Louisiana,* 363 U.S. 1, 34; Convention on the Territorial Sea and the Contiguous Zone, Arts. 1(1), 2, 14(5).

b. Even as a matter of domestic law, such a prerogative has been conceded to the States, at least in the absence of inconsistent federal regulation. See *Manchester* v. *Massachusetts,* 139 U.S. 240, 258; *Skiriotes* v. *Florida,* 313 U.S. 69, 75; *United States* v. *California,* 332 U.S. 19, 75; *Toomer* v. *Witsell,* 334 U.S. 385; *United States* v. *Louisiana,* 339 U.S. 699, 704; Submerged Lands Act, 43 U.S.C. 1301(e), 1311.

26. (La. F. 38–42). There is some evidence that Louisiana's regulation of shrimping and fishing has, at times, been exercised in East Bay more than 3 miles from shore.

a. The relevant statutes have not unequivocally included the whole of East Bay within their sway. See, *e.g.,* Louisiana Act 103 of 1926 (which expressly names certain bays, but not East Bay); Louisiana Act 51 of 1958 (which names East Bay, but perhaps only to the 3-fathom line—always less than 3 miles from shore); Louisiana Act 53 of 1958 (which establishes a limit 3 miles from the "Continental Coast Line"); Louisiana Act 452 of 1962 (which follows the shore inside East Bay).

b. The evidence does not establish that state officers have consistently enforced their regulations more than 3 miles from shore in East Bay. Practical considerations alone might well have led patrols to cross more seaward areas in order to police the marginal belts along the shores of the Bay.

c. The only specific incident introduced as affecting the area of East Bay seaward of the 3-mile line from shore is the arrest of three Mexican vessels in 1946. Tr. 824. That isolated occurrence—of which the Mexican Government can find no record—is wholly insufficient to found a ripened claim to historic waters. Compare the incidents deemed inadequate in *United States* v. *California, supra,* 381 U.S. at 174–175.

d. At all events, regulation of fishing up to 12 miles from shore (which would more than encompass all of East Bay) could as well be viewed as the assertion of a territorial sea of that width.

e. Indeed, Louisiana *was* legislatively asserting a 27-mile territorial sea (measured from "shore") from 1938 to 1953 (Louisiana Act 55 of 1938) and a 9-mile marginal sea from 1954 until the Court's decision of 1960 (Louisiana Act 33 of 1954).

f. Thus, any acquiescence by foreign fishermen in Louisiana's shrimping and fishing regulations as applied to the most seaward portions of East Bay would prove no more than that they were willing to treat the area as part of the American territorial sea—not inland waters of the United States.

27. (La. F. 44). Louisiana asserts that it has exercised pollution control within the whole of East Bay since 1932. However, the operative statute (Louisiana Act 68 of 1932) merely recites—ambiguously—that it applies to "any waters of the State," and there is no evidence of record that Louisiana enforced any pollution regulations in East Bay more than 3 miles from shore, except in connection with mineral operations after 1947. See para. 28, *infra.* In any event,

in the absence of conflicting federal regulation, a state has power to control pollution in its non-inland territorial waters that may affect its inland waters or its shore (see *Askew* v. *American Waterways Operators, Inc.,* 411 U.S. 325), so the alleged exercise of pollution control is not of significance to the issues in this case.

28. (La. F. 45–47). Louisiana granted mineral leases apparently covering portions of East Bay before the Truman Proclamation of 1945 with respect to the continental shelf (Presidential Proclamation No. 2667, Sept. 28, 1945, 10 F.R. 12303) and the Court's first "tidelands" decision in 1947 (*United States* v. *California,* 332 U.S. 19).

a. However, the first such lease, in 1928, ambiguously embraced only "Louisiana waters" (La. Ex. 90), and subsequent documents identify the area of the lease as bounded by a 3-mile belt from shore (see La. Ex. 90).

b. Indeed, the State's brief on this point when the case was last before the Court (reproduced here in relevant part in Louisiana's "Brief in Support of Suggested Findings and Conclusions of Law") dates its claim that portions of East Bay more than 3 miles from shore were leased from 1947 only (see pp. 247–248).

c. Louisiana's leasing beyond inland waters but within the 3-mile belt, while ultimately held unauthorized (impliedly in 1947 by the first *California* decision, explicitly by the first *Louisiana* decision in 1950), was previously deemed permissible by many authorities, including the Congress and Secretary of

the Interior Ickes. See *United States* v. *California, supra,* 332 U.S. at 39; *United States* v. *Louisiana,* 363 U.S. 1, 6, n. 4, 16–18, 78–79; *United States* v. *California, supra,* 381 U.S. at 180, 185–186 (Black, J. dissenting). See also, the decree in the original *Louisiana* case (340 U.S. 899) which requires the State to account for rentals, bonuses and royalties only from June 5, 1950, the date of the decision, and the provision of the Submerged Lands Act (43 U.S.C. 1311(b)(1)) which forgives any accounting for revenues derived from the 3-mile belt.

d. At all events, the resources of the seabed within 3 miles from shore were, as a matter of international law and independently of the Truman Proclamation, part of the American territorial sea, beyond inland waters, which, so far as foreign nations were concerned, were "off-limits," whether their exploitation was assigned, under domestic law, to the federal or state government. See *United States* v. *California, supra,* 332 U.S. at 33 *et seq.*

29. (La. F. 45–47). From 1947 through mid-1956, Louisiana granted mineral leases covering portions of East Bay more than 3 miles from shore, purporting to do so as owner of the seabed. But it does not follow that such leasing activities implied—at least in the eyes of foreign nations—a claim that the overlying waters were inland.

a. On the contrary, the Truman Proclamation of 1945, while asserting the right of the United States to exploit the resources of the seabed to the edge of the continental shelf, expressly disclaimed any such assertion. Presidential Proclamation No. 2667, *supra* para. 6.

b. That disclaimer was repeated in the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1332(b)), and was ultimately given full international recognition in the Convention on the Continental Shelf of 1958 (15 U.S.T. 473, T.I.A.S. 5578, Arts. 3, 5(1)).

c. Thus, from the point of view of foreign nations, Louisiana's leasing activities in East Bay, even beyond the 3-mile marginal sea, were seen merely as a derivative exercise of the right of exploitation claimed by the United States wholly independently of any assertion that inland waters were involved—exactly as they have been since 1956 when the federal and state governments entered into an Interim Agreement with respect to the disputed area.

30. Assuming the relevance of any such argument (which is most doubtful in light of the Court's prior rulings in the case), there is no basis for any claim that the United States has acquiesced in Louisiana's mineral operations in East Bay and thereby conceded the character of that area as inland water.

a. Because Louisiana did not concede the application of the 1947 *California* decision to this situation, the United States filed a separate suit against Louisiana in 1948, contesting the State's right to grant mineral leases in East Bay and elsewhere.

b. When that case resulted in a judgment enjoining Louisiana from exploiting the resources of the seabed beyond "the seaward limit of inland waters" in 1950 (339 U.S. 699); (340 U.S. 899), the federal govern-

ment sought an accounting from the State with respect to all mineral resources taken from East Bay.

c. After the passage of the Submerged Lands Act in 1953, the United States sought to reopen the earlier case to fix the boundaries of the new grant. The Court denied leave (350 U.S. 812), and the federal government then filed a new proceeding against Louisiana.

d. In mid-1956, long before the hearing of the new suit, the United States obtained an injunction against Louisiana's leasing more than 3 miles from shore in East Bay (351 U.S. 978), and all subsequent operations were undertaken pursuant to the Interim Agreement of that year (as modified by a subsequent consent judgment, 382 U.S. 288), which specifically identified as claimed by the United States all areas of East Bay more than 3 miles from the shoreline.

e. That has been the consistent position of the United States through the whole subsequent proceedings which lead to the Court's decisions in 1960 (363 U.S. 1; 364 U.S. 502) and 1969 (394 U.S. 11). See para. 6, *supra.*

f. Against this background, it would be wholly anomalous if Louisiana were to prevail with respect to the very resources in dispute merely because, during the pendency of the controversy, she had—sometimes illegally—contrived to remain in possession of them.

Conclusion with respect to East Bay

31. (La. C. 22, 24, 25, 44). Louisiana has failed to prove historic title to East Bay as inland waters from which its Submerged Lands Act 3-mile grant should be measured.

C. OTHER AREAS

32. (La. F. 69–71; La. C. 22, 24, 25, 44). Louisiana's historic inland water claim as applied to other portions of the Mississippi Delta, to Caillou Bay, and to the Shell Keys area is, in all relevant respects, either weaker or no stronger than the historic claim to East Bay. Accordingly, the conclusion must be that Louisiana has failed to prove historic title to any of these additional areas as inland water for the purpose of measuring the grant made to the State by the Submerged Lands Act.

Respectfully submitted.

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OCTOBER TERM, 1974

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,
Defendants.

REPLY BRIEF OF THE STATE OF LOUISIANA IN OPPOSITION TO THE EXCEPTIONS OF THE UNITED STATES TO THE REPORT OF THE SPECIAL MASTER

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SUMMARY

1. In response to United States' Exception No. 1, Louisiana shows that the challenged findings on juridical bay questions at East Bay (except area measurement questions) were grounded in a correct understanding of the legal criteria to be applied. The findings to which the government takes exceptions are in reality findings of fact and there is substantial evidence in the record which shows those findings are clearly correct.

2. In response to United States' Exception No. 2, pertaining to cartographic questions at Pass du Bois, Louisiana refers to evidence reviewed in other arguments, to show that the Special Master's findings of fact at Pass du Bois were supported by substantial evidence and were clearly correct, except to the extent challenged by Louisiana Exception No. 5, which includes the point that the land forms found by the Special Master to have existed until December 6, 1969 should be recognized to the present.

3. In response to United States' Exception No. 3, Louisiana shows that the findings of the Special Master as to Ascension Bay are clearly correct and based, among other correct reasons, upon factual findings as to the comparability of Ascension Bay facts to the facts of other recognized bays. Substantial evidence is shown to have supported those findings.

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REPLY BRIEF OF THE STATE OF LOUISIANA IN OPPOSITION TO THE EXCEPTIONS OF THE UNITED STATES TO THE REPORT OF THE SPECIAL MASTER

PRELIMINARY STATEMENT

Louisiana's reply brief will respond to the three exceptions taken by the United States to the Report of the Special Master and to the United States' argument in support of the exceptions. Since the United States did not discuss Louisiana's historical bay claims, including the Special Master's factual findings from the undisputed evidence introduced by Louisiana in support of such claims, and the factual findings on Louisiana's juridical claim in Caillou Bay, it is assumed these issues will be discussed by the United States in its reply brief which may require further response by Louisiana on these issues, although Louisiana, in its original memorandum, attempted to cover fully most of the issues before the Court.

UNITED STATES EXCEPTION NO. 1 (EAST BAY)

United States Exception No. 1 relates to two alternative juridical bay claims within East Bay. The government attacks the findings recognizing that Louisiana's Lines C and D each enclose a bay, with all bay requisites satisfied.[1] Isolated discussion of the alternative claims tends to confuse an understanding of the total East Bay controversy. We therefore orient this exception in the light of other East Bay issues.

Louisiana's historic bay claim, discussed in the Louisiana Brief, at 8, *et seq.*, extends from the extremity of the South Pass mudlump island to the tip of the Southwest Pass jetty. This historic bay line[2] is more outward than any of the East Bay juridical bay claims. The juridical bay claims are alternative. They will be moot if the Court accepts the more outward historic bay claim. Thus, United States Exception No. 1 need not be considered if the Court accepts Louisiana's historic bay arguments.

Similarly, if more outward Louisiana juridical bay claims are accepted by the Court, there is no necessity for the Court to determine issues related to more inward alternative juridical claims. Thus, if Line A

[1] Line C was approved by the Master until the December 6, 1969 chart revision removing its headland known as Cowhorn Island. Line D was recognized by the Master as the next more inward closing line with identifiable headlands which satisfies all bay requisites after December 6, 1969. Report, at 35.

[2] From X = 2,697,850, Y = 117,200 to X = 2,607,180, Y = 91,445.

treated in Louisiana's Exception 3, discussed in Louisiana Brief, at 67, *et seq.*, is accepted by the Court, then various technical bay issues related to Lines B, B', C, C', and D need not be considered. See Louisiana Brief, at 67-115, which treats each of the alternative juridical bay claims in order, proceeding generally from the more outward juridical claims to the more inward.

No significant[3] issue of law exists in East Bay,

[3] Paradoxically, an error of law, on the need for "clearly" identifiable headlands at East Bay, strengthens the Special Master's findings on the identifiability of East Bay headlands. The issue it treats does not affect the results of the Report at East Bay, but is highly significant for the Court's consideration of Louisiana's Exception No. 4, discussed in the Louisiana Brief, at 116-143. Reference is made to the Master's understanding that he had to find "*clearly* identifiable headlands." (Emphasis added.) Report, at 28. This contrasts with the lesser requirement of "identifiable headlands" of this Court, 394 U.S. 11, at 54. The addition of "clearly" to the Court requirement of "identifiable headlands" in the Louisiana case is inconsistent with the decree of this Court in the California case, 382 U.S. 448, at 451, *quoted*, Report, at 28-29. That decree makes plain that there is no requirement for a pronounced or clearly identifiable headland since it provided a system for identifying headlands that are *not* pronounced. The rules are the same for all states. 394 U. S. 11, at 34.

On the matter of islands as headlands, the Louisiana Boundary Case does not require that they be "clearly" part of the mainland. That opinion uses less stringent, more flexible standards, as factors for ascertaining headlands, such as whether an island headland is "realistically" part of the mainland, not whether it is "clearly" part of the mainland. In the East Bay context, the Special Master revealed the strictness of the test he was in fact requiring for other island headlands. This explains his conversion of flexible "factors" into a rigid, cumulative test on island assimilation. See Louisiana Brief, at 119-122.

other than the question of the correct method of area measurement for applying the semicircle test.[4] In the proceedings before the Special Master and now before this Court, Louisiana accepted the 1969 ruling that a bay must be a well-marked indentation with identifiable headlands that enclose landlocked waters. 394 U.S. 11, at 54. Louisiana's effort focused on developing the record to show the required legal criteria (in addition to the semicircle test) were in fact satisfied. The Master found that the record amply proved the additional requirements of the Court were in fact satisfied at East Bay for Lines A, B, C, and D.[5]

The United States' Memorandum incorrectly proceeds as though the controversy is about the Court's rulings at 394 U.S. 11, at 54. It uses this reasoning to urge the Court to rely solely on its analysis of an inadequate small-scale drawing, instead of the extensive evaluation and appraisal of technical testimony by the Special Master.

In response to the federal arguments on East Bay, we shall do three things. First, we shall point out that contrary to the implication of the government's argu-

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[4] Semicircle test area measurement questions affect only Lines A and B. All other alternative lines are conceded to satisfy the semicircle test under the restrictive legal test for water area measurement adopted by the Special Master. Lines B′ and C′ are subject to headland questions treated in Louisiana's Brief, at 94-102.

[5] Except for semicircle measurements as to Lines A and B, using the restricted area measurement legal test of the Special Master which is justified neither by the Convention nor by the 1969 opinion of this Court.

ment, the Master did in fact recognize that more was required than satisfaction of the semicircle test and did in fact find that the additional requisites of Article 7 as interpreted by this Court are proved by the record. Secondly, we shall demonstrate that a mere small-scale drawing is utterly inadequate to consider in isolation. Rather, the very evidence and technical details which were considered by the Master in determining whether the Court's requisites were satisfied, are the proper bases of judgment. Thirdly, we shall treat that evidence the government would have the Court ignore.

The Special Master Made Findings as Required by the Court that each Alternative East Bay Claim had "Identifiable Headlands," was "Well-Marked," and Enclosed "Landlocked" Waters. There is no Real Issue of Law on Legal Criteria and the Mass of Technical Evidence Sustains the Master's Conclusions on These Questions

Louisiana called to the Court's attention in its original memorandum that the Special Master, after exhaustive hearings, determined from an extensive technical record that he must find (and did find) identifiable headlands:

> . . . it would seem to follow East Bay is such an indentation in the coast that if a closing line can be drawn within it between clearly identifiable headlands so that the enclosed waters meet the semicircle test, then the result is a juridical bay within the meaning of the Geneva Convention. Report, at 28.

Louisiana then mentioned the Special Master found *all*

technical requisites were present, including identifiable headlands.

> . . . either of these closing lines [Lines A or B] might be accepted, as the area which each of them encloses has *all* of the other characteristics of a true juridical bay. Report, at 31. (Emphasis added.)

As to Lines C and D, Mr. Armstrong specifically found as a fact that all of the requirements of the Court were satisfied:

> . . . [B]oth of these also appear to meet the test of enclosing landlocked waters in a well-defined indentation with identifiable headlands. Report, at 32.

The Special Master was quite cognizant of technical arguments now again submitted to this Court which he fully considered and rejected in the light of evidence in the record:

> Although the United States argues that the headlands selected by Louisiana for these two closing lines do not meet the necessary requirements as they follow the general contour of the shore and therefore are more closely related to the entrance to subsidiary pocket bays than to the enclosing of any part of East Bay itself, this argument is untenable as there are numerous examples in the record of similar headlands which have been accepted as the termini of closing lines for bays in other areas. Report, at 32-33.

A Mere Small Scale Drawing is Inadequate As A Basis of Judgment

The United States is urging the Court to over-

rule findings of fact by the Special Master by considering certain inaccurate drawings of East Bay in its brief (not based on stipulated maps) without taking into account the exhaustive record considered by the Special Master.

Louisiana maintains these findings of fact on geomorphic questions are correct.[6]

We re-emphasize that the United States, without discussing the evidence in the record, is asking this Court to overrule the findings of fact by the Special Master, including those relating to Louisiana's Lines

[6] Louisiana urges the Special Master misread the Convention and the rulings of this Court on the water areas to be considered for the purpose of determining whether the area enclosed by Louisiana's Lines A and B satisfied the semicircle test. The Special Master had some serious doubt on this score as is apparent from the comment in his Report where he recognized that the Court might very well consider his method too restrictive and adopt either Louisiana's method 2 or 3. In that case, the Special Master found that the area enclosed by Louisiana's Line A would meet the semicircle test by using method 3 and the area enclosed by Louisiana's Line B would meet the semicircle test by using method 2. The Master must have also had some serious doubts about whether his findings on erosion would be accepted by this Court. Reasons treated in the Louisiana Brief, at 77-92, confirm Mr. Armstrong's uncertainty on area measurement and erosion matters as suggested by his finding that Line A and B possessed all other characteristics of a true juridical bay. See Report, at 31.

> If this were not the case, either due to the adoption of a more liberal method of water area measurement or due to subsequent erosion in the area established by competent evidence in the record, either of these closing lines might be accepted, as the area which each of them encloses has all of the other characteristics of a true juridical bay. Report, at 31.

C and D, based on drawings 1 and 2 in its brief, which do not portray East Bay as developed by the evidence.

A small-scale drawing, considered alone, is not suitable for coastline determination problems involving precise geographic details, such as identifying headlands. There is a good reason underlying the rule of the Convention that it is the "low-water line along the coast as marked on large-scale charts officially recognized by the coastal State" which should be employed for determining the baseline. See Article 3.[7] A mariner seldom sees a whole bay at once, except on a chart. Judgments at sea must be based upon large-scale charts. Smaller scale reduced size drawings, by their very nature, can eliminate detail or reduce the effect of detail upon full-size "large-scale" charts. That is why illustrations presented by Louisiana, *e.g.*, Figures 2 through 5,[8] Louisiana Brief, at 71-74, were photographically reduced charts in effect for dates under consideration. However, even reduction of these charts required the caveat that inevitably geographic features were destroyed or modified which can only be appropriately represented on full-size, large-scale charts. Small-scale, reduced size drawings are more imprecise.

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[7] This refutes the federal argument that maps of a larger scale than used on official charts are needed. Compare that argument, found in the United States' Memorandum, at 19, with the argument that the drawings at a small scale are all the Court needs to pass on the geographic questions.

[8] References to figures of Louisiana's earlier brief are styled *e.g.*, "Figure 2." To identify which figures are in *this* reply memorandum, figures herein are styled with a letter prefix "R", *e.g.* Figure R-1.

That is why Article 3 calls for the use of large-scale charts. Thus, while a small-scale drawing may be useful to consolidate large-scale information or to make gross comparisons, the large-scale materials should be examined when detail is significant, as in the case of selecting headlands.

The Special Master's judgment was based not merely on small-scale drawings but upon his examination of dozens of large-scale charts and, where charts were incomplete or in error, upon the examination of detailed surface and aerial photographs. See, *e.g.*, Figure 7, Louisiana Brief, at 78, one of hundreds of photographs of the East Bay perimeter in the record of the case. In evaluating such evidence, he was aided by his personal aerial inspections of East Bay. Additionally, his findings of fact on the landlocked matter and the well-marked identifiable headland problem were based as well on a host of testimony, cartographic exhibits, photographic exhibits, survey maps, geographic and geomorphic expert testimony, both federal and state as itemized below. The government, instead of treating this evidence, would have the Court pass upon these complex questions on the basis of simplified drawings which are inadequate as to headland and other vital details. There would have been no need to refer this issue to the Special Master if the Government argument is accepted.

One problem which well illustrates the inappropriateness of attempting to use simplified, small-scale sketches to determine the minutiae of headland selection relates to lack of color which is present on large

scale charts to contrast land-water areas. Another is the lack of detail lost when large scale maps or charts are reduced. See testimony of the cartographer, Mr. Larimore, Tr. 5642-5. An example of this loss of detail is the complete failure of the drawings at South Pass to show the mudlump islands and especially the island which is the eastern headland of Line A lying between X = 2,697,300, Y = 118,500, and X = 2,697,850, Y = 117,200. See Map 4 of 8 of the Set of 54 Maps (the stipulated maps) and La. Exh. 8 (tr. 164), a copy of Chart 1272 showing the islands, and La. Exh. 342 (tr. 6271) and related testimony of Dr. Morgan showing how the South Pass spit had nearly grown out to this island. This was the subject of much other evidence weighed by the Master, when he approved Line A's headlands as identifiable and enclosing landlocked waters. The government would overcome this evidence by not showing the island, not showing the reconstruction of the spit and the growth of it, and simply telling the Court that all the Court needed to do was look at the drawings which ignore such evidence.

Another deficiency of a simplified drawing is the failure to treat changes in configuration over time.[9] East Bay's configuration on June 5, 1950, the initial stipulated accounting date, was different from the configuration that existed on August 2, 1955, when the

[9] See Louisiana Brief, at 110, discussing the fact that a "chart" is not precise but is a reasonable summary of a motion picture, and that is what is required by Article 3. Contrast this to the United States' Memorandum, at 17, claiming that four times greater precision or absolutely correct mapping is required. This is impossible for a changing coast.

chart was revised, and on September 17, 1956, when the chart was revised, and in subsequent chart revisions.[10]

The location of the western headland, a peninsula on the Southwest Pass side, so plainly reflected on the September 17, 1956 chart and on the September 17, 1962 chart, as shown in La. Exh. 180 (tr. 2679), are ignored in the drawings which employ the later configuration at a more northerly location.

Drawings 1 and 2 in the United States' Memorandum do not show most of the tributary waters entering East Bay from South Pass and Southwest Pass. See *e.g.*, photographs reproduced as Figure 7, Louisiana Brief, at 78; and Figures 9-A through 9-D, Louisiana Brief, at 82, 83. Nor do they show Joseph Bayou entering East Bay from Southwest Pass and the canalization of the landed area around Joseph Bayou which leads to destruction of the marsh and mere remnants of spoilbanks rather than solid land mass. Such a drawing cannot reflect the magnitude of erosion, which is well explained verbally in the testimony of Alan Ensminger, Tr. at 767-69, 789-801, and Dr. Morgan, Tr. at 2366-70.

With the exception of a drawing which was mere-

[10] See La. Exh. 23 (tr. 386) showing the chart configurations in effect between 1944 and 1956, La. Exh. 180 (tr. 2679) containing a reproduction of charts covering the period of 1918 through the chart changes of September 17, 1962, on the official chart 1272 with overlays showing a satisfaction of the semicircle test for the quite pronounced headlands of Line C'.

ly illustrative of a concept, *e.g.*, Figure 1, Louisiana used reduced copies of actual evidence in the record in preparing the graphic figures in our recent brief. See Figure 2 through 5, Louisiana Brief, at 71-74; and Figures 7 through 11, Louisiana Brief, at 78-85.

No simplified drawing can show the detailed reality of photographic evidence like Figure 10, at 84, Louisiana Brief.

Line drawings are, however, a practical way to compare gross configurations of indentations. It is noteworthy, however, that the Government Memorandum did not attempt such comparisons.

Legal Requirements and Precedent

Sound legal technique requires careful weighing of the facts of this case against precedent and the letter of the Convention.[11]

Article 7, par. 2 reads:

> 2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semicircle whose diameter is a line drawn across the mouth of that indentation.

Certain elements stand out. There must be (1)

[11] The United States' Memorandum, at 8, claims "no reference to the record is necessary or *appropriate*." (Emphasis added.)

"a well-marked indentation," (2) which "contains landlocked waters" and is more than a mere curvature of the coast. Whether a water body contains landlocked waters and is thereby more than a mere curvature of the coast, under the clear and controlling letter of the Convention depends upon whether it has sufficient "penetration . . . in such proportion to the width of its mouth as to contain landlocked waters." This Court has interpreted these Convention provisions as implicitly requiring that a bay closing line should have "identifiable headlands."

The identifiable headland problem is appropriately considered under the requirement of a "well-marked indentation." See Article 7, paragraph 3 which directs use of the "natural entrance points" for marking the line behind which the area of the indentation is to be measured.

This is not to say that there must be a *pronounced* headland to constitute the identifiable headland which should be employed as a natural entrance point.[12] But if there is a pronounced headland feature, the outermost qualifying extension of it which meets all requirements of a bay should be identified as the bay closing line. This Court has already held, 394 U.S. 11, at 34, that Louisiana should be treated like California and other states. In the decree in *United States v. California*, 382 U.S. 448, at 451, it was provided:

> In drawing a closing line across the entrance of any body of inland water having pronounced headlands, the line shall be drawn between the points

[12] See note 3, *supra*.

where the place of mean lower low water meets the outermost extension of the headlands. Where there is no pronounced headland, the line shall be drawn to the point where the line of mean lower low water on the shore is intersected by the bisector of the angle formed where a line projecting the general trend of the line of mean lower low water along the open coast meets a line projecting the general trend of the line of mean lower low water along the tributary waterway.[13]

This precedent reflects two principles: (1) that, where presented with the choice, it is necessary to use the outermost identifiable headland, and (2) an identifiable headland need not be pronounced and can be identified by the bisector of the angle method, a well-established geographical technique. See 1 Shalowitz, *Shore and Sea Boundaries*, 64.

This accords with the excellent analysis of the problems of applying Article 7 made by the British judiciary in the important precedent, *Post Office v. Estuary Radio Ltd.*, 3 All E.R. 663, at 681 (1967).[14]

[13] *Quoted* by the Special Master, Report, at 28, 29.

[14] This British case is also of great importance on the matter of measurements under Article 7, par. 3, calling for use of the "low-water mark around the shore" of the indentation. While the higher British court had no need to reach this question, as explained 3 All E.R. at 684, the trial court ruled:

> I have come to the conclusion that one has to go up every river and creek which has got a low water line to it, to the limit, and difficult as it may be to produce the resultant calculation, that is the right way to do it.

This British interpretation of Article 7, par. 3, supports

> It follows from this definition that within a larger indentation which, because of the width of its mouth in proportion to its penetration, is not itself a "bay", there may be a smaller indentation which is itself a "bay" provided that there are identifiable points on either side of the mouth of the smaller indentation which can be properly described as its natural entrance points. Where this is so it is irrelevant that the sea on the seaward side of the bay itself lies on the landward side of the mouth of the larger indentation which, because of the width of the mouth in proportion to its penetration, is not a "bay".

The British practice accords with this Court's decision on East Bay juridical bay questions. See 394 U.S. 11, at 53, 54. Having found that an outermost line did not qualify, this Court held an alternative line at a more inward location would enclose a bay if it had identifiable headlands which enclose a well-marked indentation containing landlocked waters. A Special Master was needed to conduct an inspection of large-scale charts and consider other evidence affecting the question of whether one can identify entrance points

Line A, and if accepted by the Court, more inward lines need not be considered.

Like the British Court, in rejecting a former Louisiana argument based on expediency, this Court has held that the text of the law controls over practical arguments. 394 U.S. 11, at 34. Thus, whether or not 1:20,000 *maps* are *more* sensible or correct than 1:80,000 charts, the charts control unless they differ from reality "to any great extent" or "unrealistically" extend the low-water line. Testimony of Dr. Louis Henkin, the Government's expert on international law. Tr. 4936-8.

of an indentation possessing the required characteristics.

As the British Court observed, 3 All E.R. at 683, 684 (1967)

> The only simple and convenient way [to select headlands or boundary baselines or bays] is by visual inspection and measurement of the officially recognized charts of the claimant state. Confirmation of this is to be found in art. 3 of the Convention, which reads as follows:
>
> > "Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state;"

and a further indication can be seen in art. 4, para. 6.

* * *

> This was a question of fact for the judge to be decided in the light of his own observation of the charts which were put in evidence, and such assistance as he could obtain from the evidence of the expert witnesses. We agree with his decision.

The criteria for determination of headlands, that is for identifying headlands or natural entrance points, have been so well summarized by Shalowitz:

> For establishing the precise boundary points or termini at headlands (referred to as "landmarks" by the Special Master in the *California* case) that will best establish the limiting line of

inland waters, certain physical facts must be kept in mind.

Headlands are subject to almost limitless variations as to size, shape, and orientation. Therefore, any rule laid down must be general in character and may require exceptions in individual cases. In common usage, the word headland implies a land mass having considerable elevation, something that the navigator can see from offshore—a kind of landmark for him. However, in the context of the law of the sea, elevation is not a pertinent attribute. What is important are the relationships between land and water which lie in a horizontal plane. A headland can then be defined generally as the apex of a salient of the coast; the point of maximum extension of a portion of the land into the water; or a point on the shore at which there is an appreciable change in direction of the general trend of the coast.

The shores of the headlands are formed by two different groups of forces—those of the ocean and those of the estuary or tributary waterway. The points sought are where the shores resulting from these forces meet. Therefore, each terminus of the headland-to-headland line is taken as a point at the outermost extension of the headland from which it is drawn. There is frequently some one characteristic point, some minor shore form, as a sandspit or cusp, which obviously is the point sought. (*See* point *A* in fig. 12.) Where the headland is of considerable extent with a gently rounded and featureless shore, a satisfactory solution may be reached by bisecting the angle formed by a line coinciding with the general trend of the low-water mark along the open coast, and a line coin-

> ciding with the general trend of the low-water mark along the bay or tributary waterway. Where this bisectrix intersects the low-water mark will be the point sought. 1 Shalowitz, at 63-65.

Shalowitz was the principal government witness in the Special Master proceedings of the California case. His book, quoted above, is an official publication of the Coast and Geodetic Survey, representing federal positions.

These standards are not susceptible of precise definition.[15] For detailed application of the text of Article 7 in deciding what is well-marked or landlocked in particular circumstances, one should look to the facts of decisional law, especially decisions the article codified.

The *North Atlantic Coast Fisheries Arbitration* [16] involved numerous bays which might furnish a basis of comparison, if an example could be found of an indentation which had the shape of East Bay behind claimed lines.

The Thames Estuary [17] decision, discussed *supra*, furnishes a further factual construct for comparison to precedent, for it was approved as satisfying bay rules.

As the government itself argued in the proceedings before the Special Master, the concept of *inter*

[15] See 394 U.S. 11, at 66, *quoting* Shalowitz, ". . . no precise standard is possible."

[16] Scott, The Hague Court Reports, 141 (1916).

[17] Post Office v. Estuary Radio Ltd., 3 All E. R. 663 (1967).

fauces terrae embodies the bay concepts, well marked and landlocked. So it was important to search for circumstances of a precedent that would clarify the abstract maxim for the case at bar. The decision in the *Moray Firth* case [18] in Scotland furnished such a precedent.

In these equal United States, it is also important to search for precedent in government treatment of our sister states to ascertain whether that which is claimed abstractly to support oil claims as against Louisiana accords with the precise facts of precedent involving our sister states where no oil claims are present. For this, there are a host of precedents contained in U.S. Exh. 416D (tr. 6427).[19]

The earlier decision of this Court in this case also furnishes important precedent, *e.g.*, the holding [20] on the use of tributary water bodies within West Bay as forming part of the area of Ascension Bay. Thus, those facts warrant comparison to East Bay facts.

Thus, in response to the abstract federal arguments on claimed analyses and applications of law to East Bay, Louisiana offers concrete comparisons to the facts of these cases and other precedents.

The Facts of East Bay and Recognized Bays

The government apparently argues at pages 11-12

[18] Mortenson v. Peters, 14 Scots L.T.R. 227 (1906).

[19] Self-serving delineations should not be accepted as binding on the other party nor upon the Court but they should certainly be acceptable as persuasive evidence against the government which has made them.

[20] 394 U.S. 11, at 53, n. 71.

of the United States' Memorandum that unless East Bay as a whole, behind its artificially widened mouth,[21] qualifies as a bay, no inner part may qualify. This is grounded upon geometrically false assumptions, *e.g.*, that East Bay is an exact triangle with sides that are perfectly straight and maintain the same relative depth of penetration in proportion to width of mouth. Even inspection of the government drawings refutes this. While arguing that the areas behind East Bay closing lines do not qualify because they are allegedly V-shaped or triangular, the government simultaneously argues that they do not qualify because there are discrete pockets of water at the termini of the closing lines. There is no way the government can reconcile these "pockets" with the V or triangular shaped argument unless it is said that the V or triangle has sharp hooks

[21] Government drawings 1 and 2 present a view of the indentation formed by the artificially splayed or widened mouth created by the miles long Southwest Pass jetties. For purposes of measuring area or depth of penetration in proportion to the mouth, Article 7, paragraph 3 should be followed in the requirement that the *natural* entrance points of a bay are to be used in measuring the bay.

Louisiana closing Line A strikes the base of the jetty that is the outer extremity of the natural land and is identifiable for that reason by inspection of the official large-scale charts which show this. (Government drawings 1 and 2 do not show the full extent of that jetty. U.S.C. & G.S. chart 1272 does because it is at a large scale, and the federal drawing is at a small-scale.) See the testimony of Mr. Larimore, the cartographer, Tr. 5597-5599 explaining that the line of La. Exh. 23 (which corresponds to Line A) uses an identifiable headland, identifiable on a chart as the outer limit of the natural land.

at its mouth; but then it is inconsistently alleged that there are no pronounced features at the termini which enclose landlocked waters.

A closing line must be evaluated on the basis of its "own features." [22]

If this were not so, a closing line could never qualify if it carved out a portion of a larger indentation that did not also qualify as a bay. Both this Court and the British Court has ruled to the contrary.[23]

The unsound shape arguments of the United States are also defeated by their own expert, Dr. Robert Hodgson, the Geographer of the State Department. This is shown on maps which were prepared under his direction, delineating various bay claims in the United States which were approved by the interdepartmental committee of the United States and introduced over Louisiana's objection as U.S. Exh. 416D (tr. 6427).

Figure R-2 is a partial list of dozens of such bays, as shown in United States Exh. 416D (tr. 6427). Many more can be found therein. None of these bays have recurved or pinched headlands which the government implies is essential in the position which it continues to assert in n. 15, at 12 of its Memorandum (the argument that a V-shaped bay does not qualify.) [24]

Ursus Cove and Abraham Bay are examples of

[22] 394 U.S. 11, at 54.

[23] 394 U.S. 11, at 54 and *Post Office v. Estuary Radio Ltd.*, 3 All E.R., at 663 (1967), *quoted* in text *supra* at n. 14. See Figure R-1.

[24] Of course, East Bay is not truly a perfect V or triangle, a further deficiency in the argument.

essentially V-shaped bays. Many other examples can be found outside of the United States, *e.g.*, the Thames Estuary and Moray Firth. See Figure R-3 showing the general shape of Ursus Cove and Abraham Bay, and the closing line approved by Dr. Hodgson and the interdepartmental committee. Compare these non-oil producing bays to the arguments, United States Memorandum, at 12-13, about wide mouth, triangular shaped bays.

Figure R-1, *supra*, shows the Thames Estuary, and its recognized closing lines. The British Court was prepared to accept either line finally using Line 2 *arguendo* to avoid area measurement problems. In the Louisiana trial, a cartographer, Mr. Larimore, made suitable scale transparencies of East Bay, La. Exh. 295-A (5640) and the Thames Estuary, La. Exh. 291 (tr. 5618) to overlay East Bay on the Thames Estuary at the same map size. Tr. 5640-41. As he testified, and as the Special Master could see for himself:

> It fits rather well . . . Tr. 5641.

Handling of transparencies is not practical in brief. This is an example of why the Special Master's findings should bear special weight.

The Moray Firth decision presents an example of a bay which was recognized in Great Britain as having the necessary *inter fauces terrae* shape. Figure R-4 reproduces an illustration from Commander Strohl's treatise on bays, showing its 73 mile mouth and shape.

Line A claimed by Louisiana compares very well. See Figure R-5. The other lines would fare as well or better.

Egmont Bay is a bay which Britain and the United States recognized as a juridical bay as a consequence of the famed *North Atlantic Coast Fisheries Arbitration*, cited by the Special Master, Report, at 28. That bay and its recognized closing line was compared to East Bay's Line A in the proceedings before the Master. We did not bother to compare it to all of the alternative lines, in the interest of brevity, but all of the lines compare well. Again, the cartography does not lend itself to ready comparison in brief.

These graphic comparisons are accomplished by enlarging or reducing one or the other bay configuration until its mouth is the same size (on paper) of the bay to be compared. Thus, shape or configuration can be compared free of the effect of size or scale. Moray Firth is 73 miles wide at its mouth. The widest alternative juridical mouth for East Bay claimed by Louisiana (Line A) is about 12 miles, the smallest is less than five miles.[25] The Thames Estuary is about 43 miles wide at its outer mouth, nearly 30 at its inner mouth. Many bays in U.S. Exh. 416D (tr. 6427) can be favorably compared to East Bay, on the basis of shape and size. We show a few in Figure R-6 which show federally recognized bays from U. S. Exh. 416D (tr. 6427) with mouths often precisely the same size as the principal East Bay juridical claims.

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[25] See La. Exh. 197 (tr. 3541)

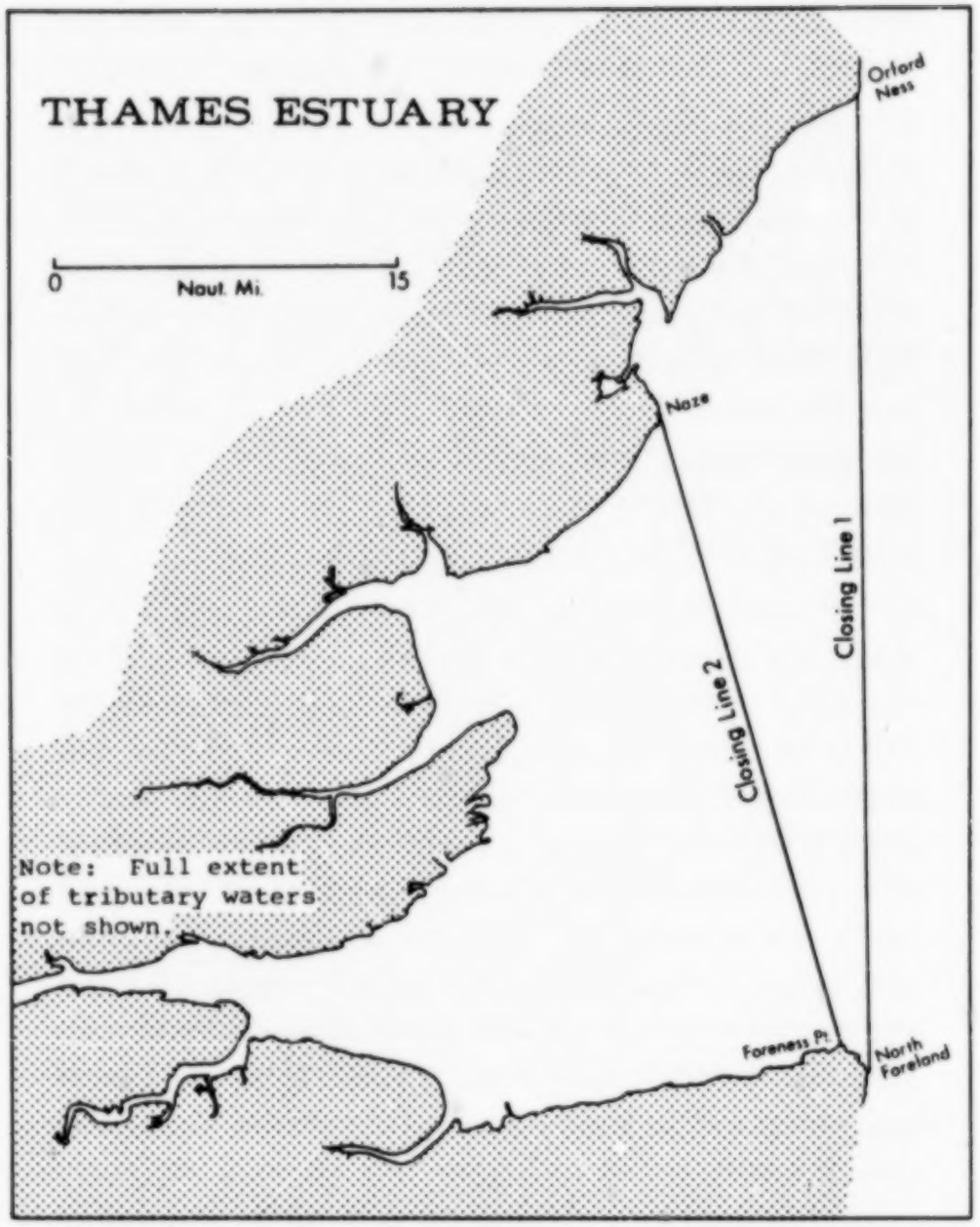
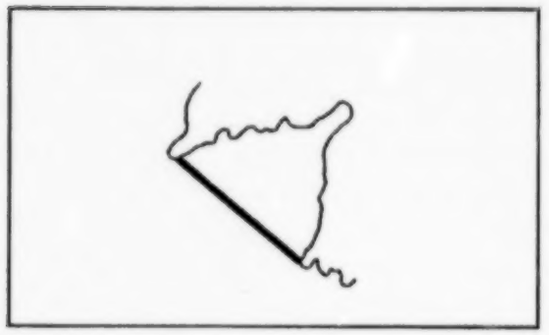


Figure R-1. Fall-back principle for bay closing line determination as discussed in *Post Office v. Estuary Radio, Ltd.* [1967] 3 All E. R. 663, 681, [La. Exh. 283 (17)]. Closing line 2 becomes the proper bay closure if closing line 1 does not meet bay area requirements.

Bay	*Chart No.*
Frenchman	1202
Blue Hill	1202
West Penobscot	1203
Muscongus	1204
John's Bay	1204
Buzzards	1210
Wassaw Sound	1241
Garden Island	1272
Bucket Bend	1272
Corpus Christi	1286
Bay of Pillars	8252
Saginaw	8252
Whitewater	8252
Hood	8252
Freshwater	8252
Gilmer	8252
Yakutat	8402
Icy	8457
Port Bainbridge	8551
Puget	8552
Resurrection	8552
Harris	8552
Kamishak	8554
Kachemak	8554
Farmanof	8556
Tonki	8556
Alitak	8556
Kashvik	8556
Portage	8556
Puale	8556
Balboa	8859
Belkofski	8859
Volcano	8859
Pavlof	8859

Figure R-2. A partial list of indentations with closing lines delimited as enclosing inland waters by the federal government in U.S. Exh. 416-D (tr. 6427) which do *not* have or use recurved or "pinched" headlands but which nevertheless were apparently considered as the limits of landlocked waters.

Ursus Cove from Chart 8554 in U.S. Exh. 416-D (tr. 6427).



Abraham Bay from Chart 8865 in U.S. Exh. 416-D (tr. 6427).

Figure R-3

Another way to compare bays, other than by graphic inspection of chart configurations, is to employ measurement data. This is particularly important for the "landlocked" question, to determine whether a bay is more than a mere curvature of the coast.

If the depth of penetration is half of the mouth, the bay ought to be deemed landlocked. This is the

principle of the semi-circle test. As the Dutch scholar, Dr. Leo J. Bouchez stated:

> The essence of this definition is that indentations the penetration of which is at least half the width of the entrance are classified as bays.[26]

All lines claimed by Louisiana easily satisfy this ratio of .5 to 1. See Figure R-7, discussed below. Only Lines A and B are not admitted by the government as fully satisfying the semicircle test.

The Special Master's holdings that each of the principal alternatives claimed by Louisiana satisfied all juridical bay requisites, other than as noted above, were also made in the light of precise measurement data presented through the testimony of a geomorphologist, using linear measurement technique. The ratios for Lines A, B, C and D compared to Monterey Bay, using the system recommended by an expert, as summarized in Figure R-7, amply support the finding of the Special Master, who, after quoting the rule

> . . . a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast.

applied that rule and found as a fact:

> The physical configuration of the East Bay area would seem to meet this test upon the basis

---

[26] Bouchez, *The Regime of Bays in International Law*, at 19, 20. See also discussion *infra* entitled "Of C's, V's and O's."

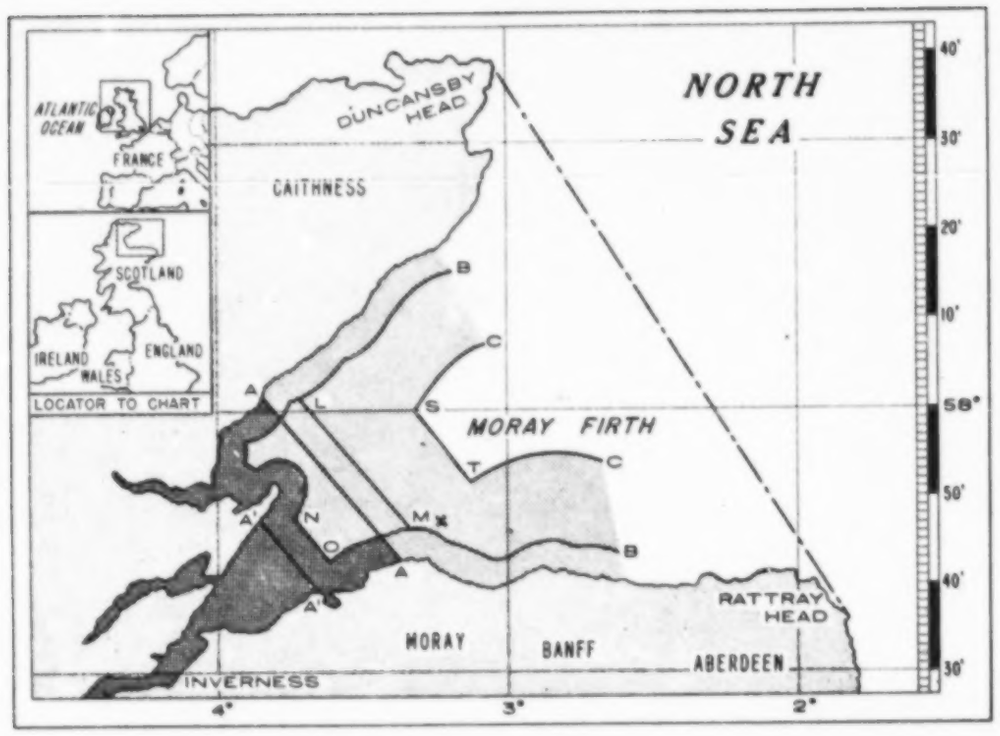


Figure R-4. Reproduction of Figure 15 from Commander Mitchell P. Strohl's book, *The International Law of Bays*, showing the 73.5 mile closing line between natural entrance points of Moray Firth, Scotland.

MORAY FIRTH, SCOTLAND

FIG. 15

LEGEND

AA—24-mile closing line.
BLMB—Outer limit of 3-mile marginal belt using 24-mile closing line.
A'A'—10-mile closing line.
BLNOMB—Outer limit of 3-mile marginal belt using 10-mile closing line.
CSTC—Outer limit of 12-mile marginal belt using 24-mile closing line.
- — - —Line *inter fauces terrae*, as described in Moray Firth Case of 1906.
X—Site of alleged offense of Emmanuel Mortenson in Moray Firth Case of 1906.

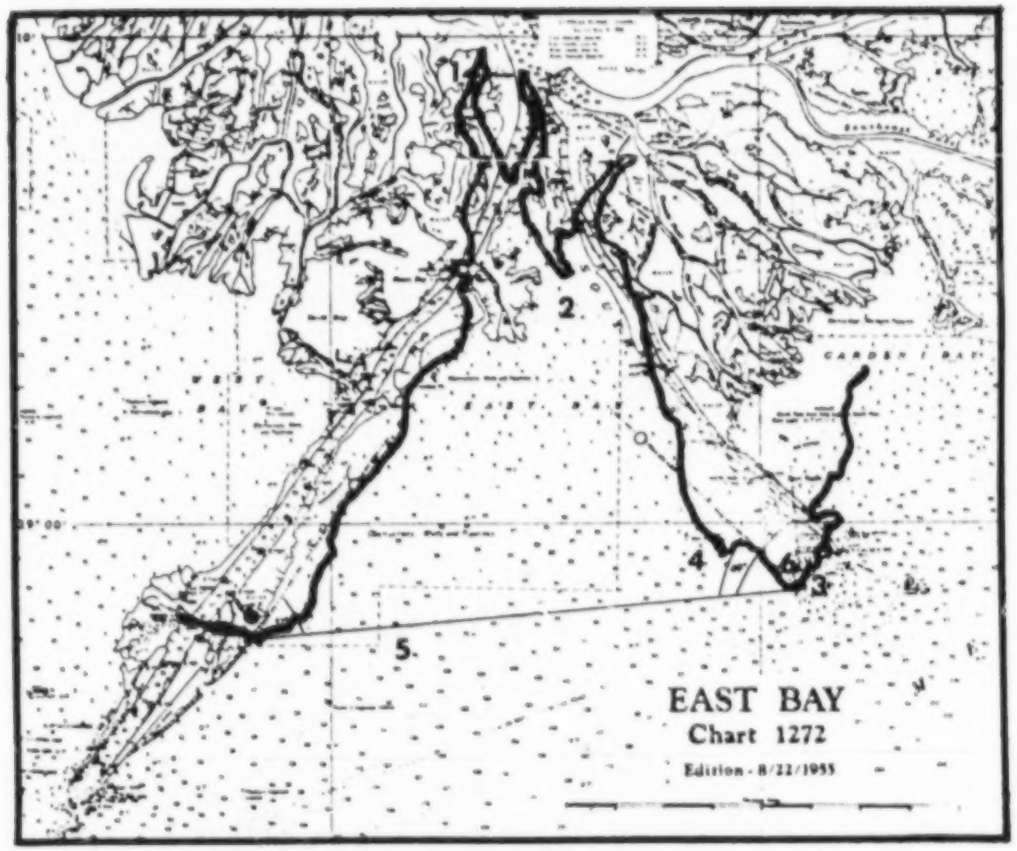


Figure R-5. East Bay and Moray Firth (in dark outline) : A comparison

1. Depth of penetration is roughly comparable.
2. Basic overall configuration is comparable.
3. A sharp salient, the tombolo at South Pass juts out and gives extra shelter to East Bay.
4. East Bay closing line passes 45° proposal; Moray Firth closing line fails it.
5. Moray Firth 73.5 miles wide; East Bay line is less than 12 miles wide.
6. East Bay's headland angle to closing line more sharp and pronounced.

Note: The 1955 chart, from La. Exh. 23-A, was chosen for its clarity in reproduction. The essentials of the comparison would not differ if other charts were employed.

EAST BAY

Closing line "A" – 12.1 na. mi.

Source: La. Exh. 197

Note — bay periphery generalized; additional tributary waters not shown.

PORTAGE BAY

Source : U.S. Exh. 416-D, Chart 8556

Closing line = approx. 6.5 na. mi.

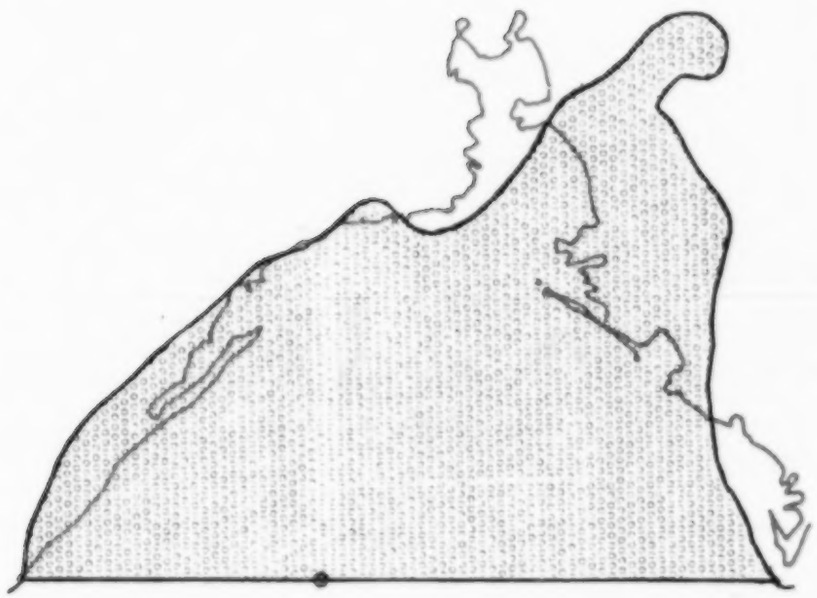


Figure R-6a

EAST BAY

Closing line "A" – 12.1 na. mi.

Source: La. Exh. 197

Note — bay periphery generalized; additional tributary waters not shown.

URSUS COVE

Source : U.S. Exh. 416-D, Chart 8554

Closing line = approx. 6 na. mi.

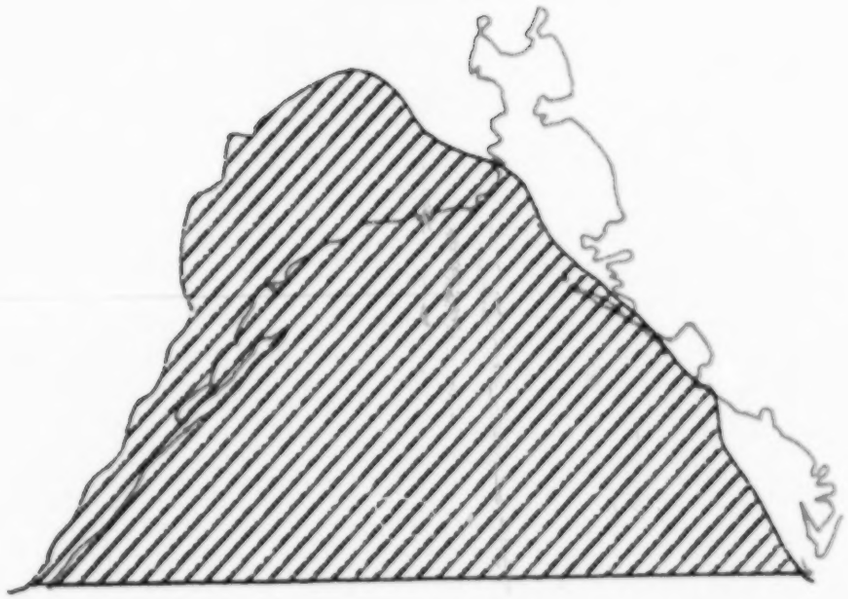


Figure R-6b

EAST BAY

Closing line "B" - 6.6 na. mi.

Source: La. Exh. 197

Note — bay periphery generalized, additional tributary bay waters not shown

ABRAHAM BAY

Source : U.S. Exh. 416-D, Chart 8865

Closing line = approx. 6 na. mi.

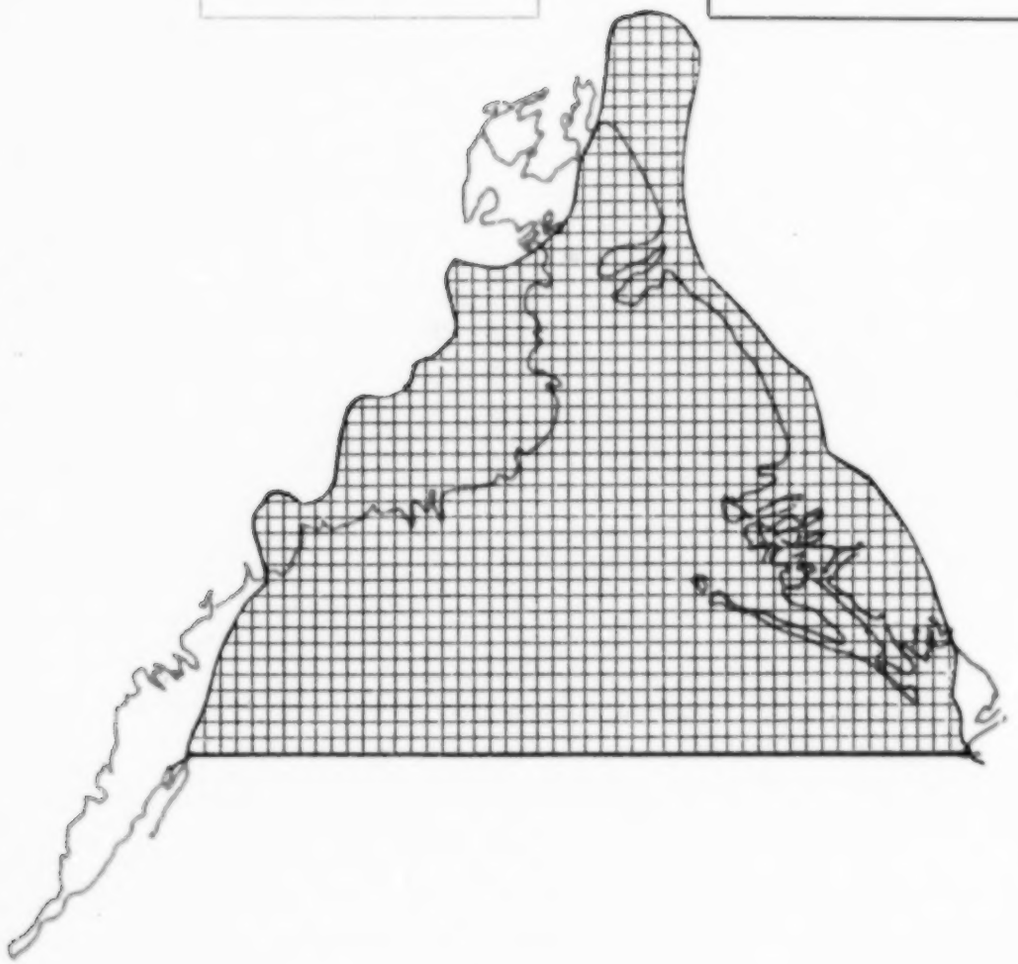


Figure R-6c

EAST BAY

Closing line "B" - 6.6 na. mi.

Source: La. Exh. 197

Note — bay periphery generalized, additional tributary bay waters not shown

PORTAGE BAY

Source : U.S. Exh. 416-D, Chart 8556

Closing line = approx. 6.5 na. mi.

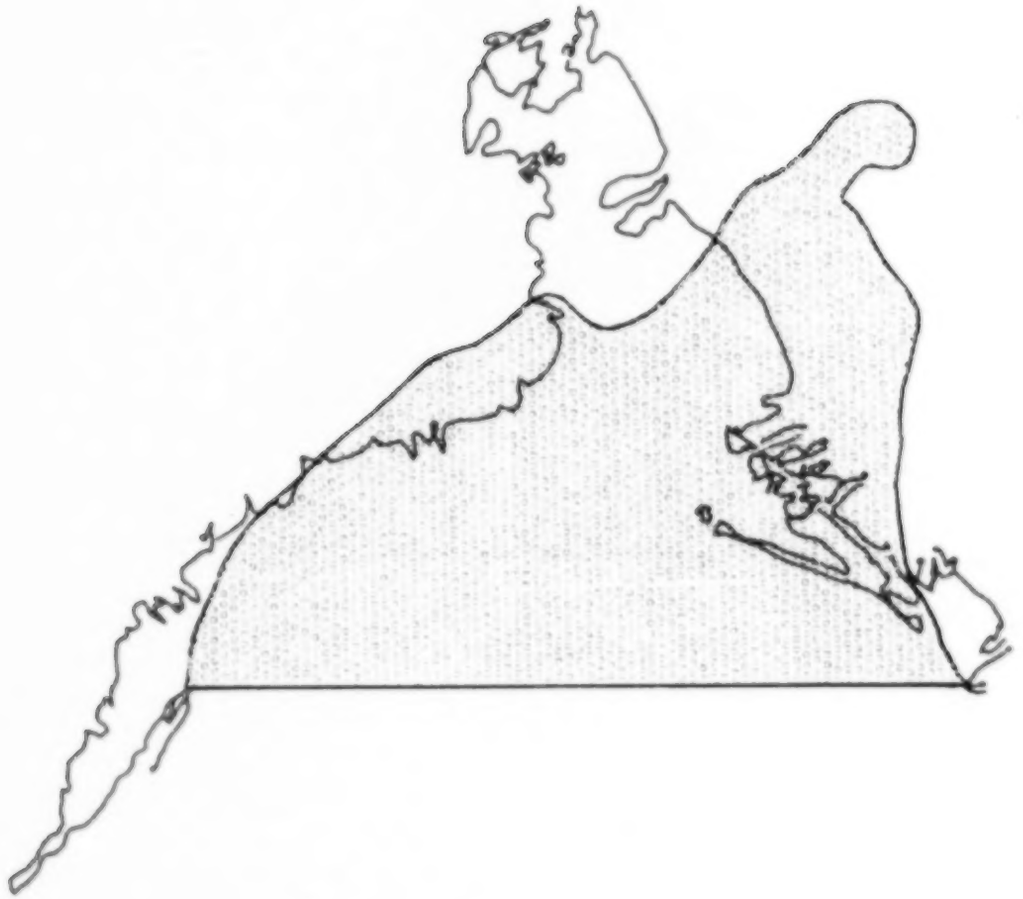


Figure R-6d

EAST BAY

Closing line "C" – 5.4 na. mi.

Source : La. Exh. 197

Note — bay periphery generalized; additional tributary bay waters not shown

PUGET BAY

Source : U.S. Exh. 416-D, Chart 8552

Closing line – approx. 5.5 na. mi.

Figure R-6e

EAST BAY

Closing line "C" – 5.4 na. mi.

Source : La. Exh. 197

Note — bay periphery generalized; additional tributary bay waters not shown

PORTAGE BAY

Source : U.S. Exh. 416-D, Chart 8556

Closing line – approx. 6.5 na. mi.

Figure R-6f

EAST BAY

Closing line "C" - 5.4 na. mi.

Source : La. Exh. 197

Note — bay periphery generalized; additional tributary bay waters not shown

ABRAHAM BAY

Source : U.S. Exh. 416-D, Chart 8865

Closing line = approx. 6 na. mi.

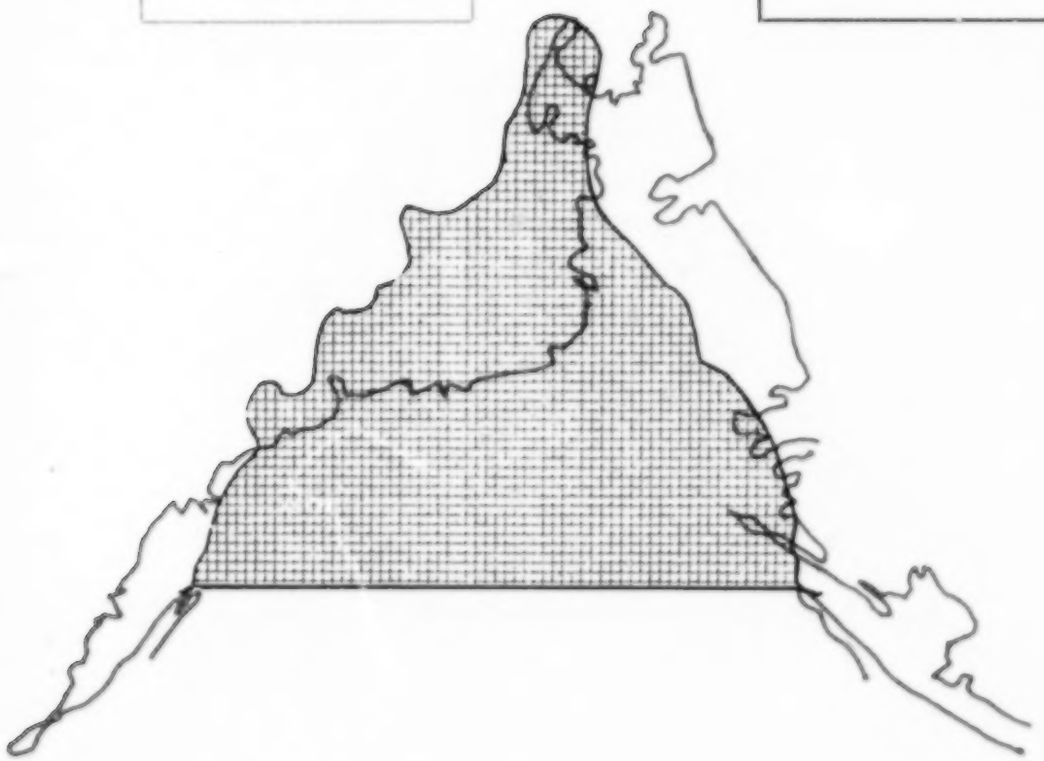


Figure R-6g

EAST BAY

Closing line "D" - 4.6 na. mi.

Source : La. Exh. 197

Note — bay periphery generalized; additional tributary bay waters not shown

PUGET BAY

Source : U.S. Exh. 416-D, Chart 8552

Closing line = approx. 5.5 na. mi.

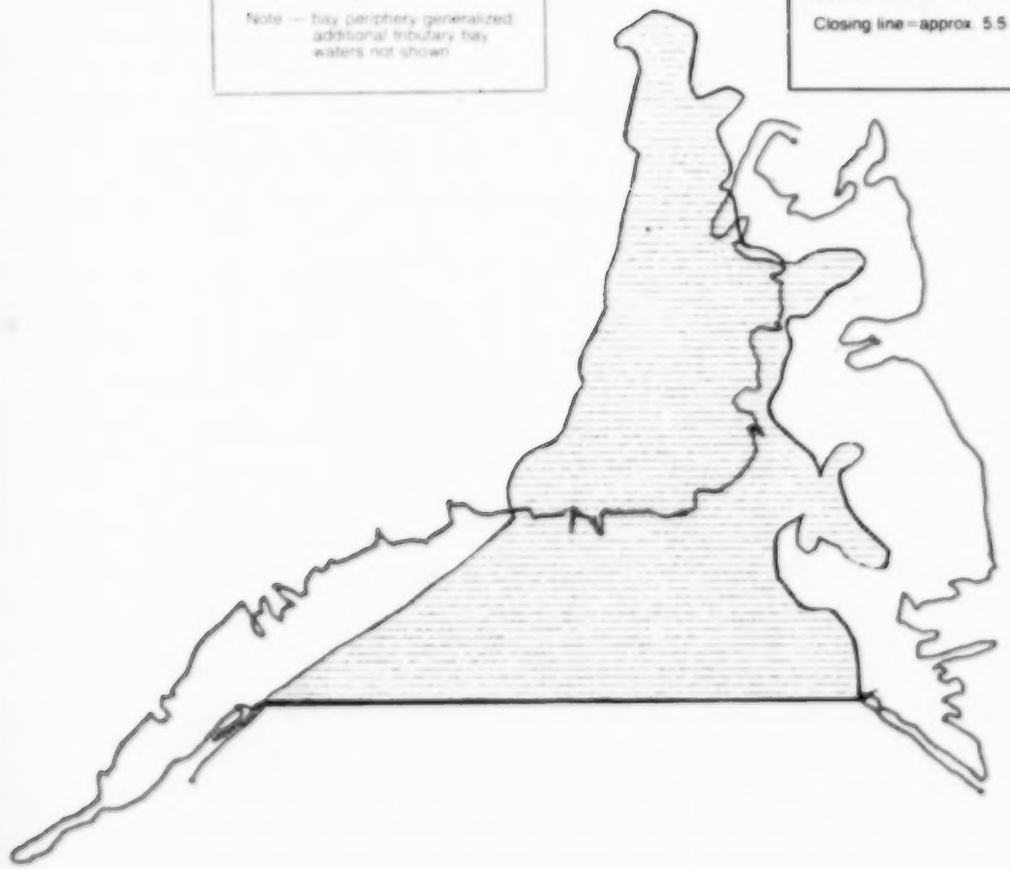


Figure R-6h

EAST BAY

Closing line "D" = 4.6 na. mi.

Source : La. Exh. 197

Note — bay periphery generalized; additional tributary bay waters not shown.

PORTAGE BAY

Source : U.S. Exh. 416-D, Chart 8556

Closing line = approx. 6.5 na. mi.

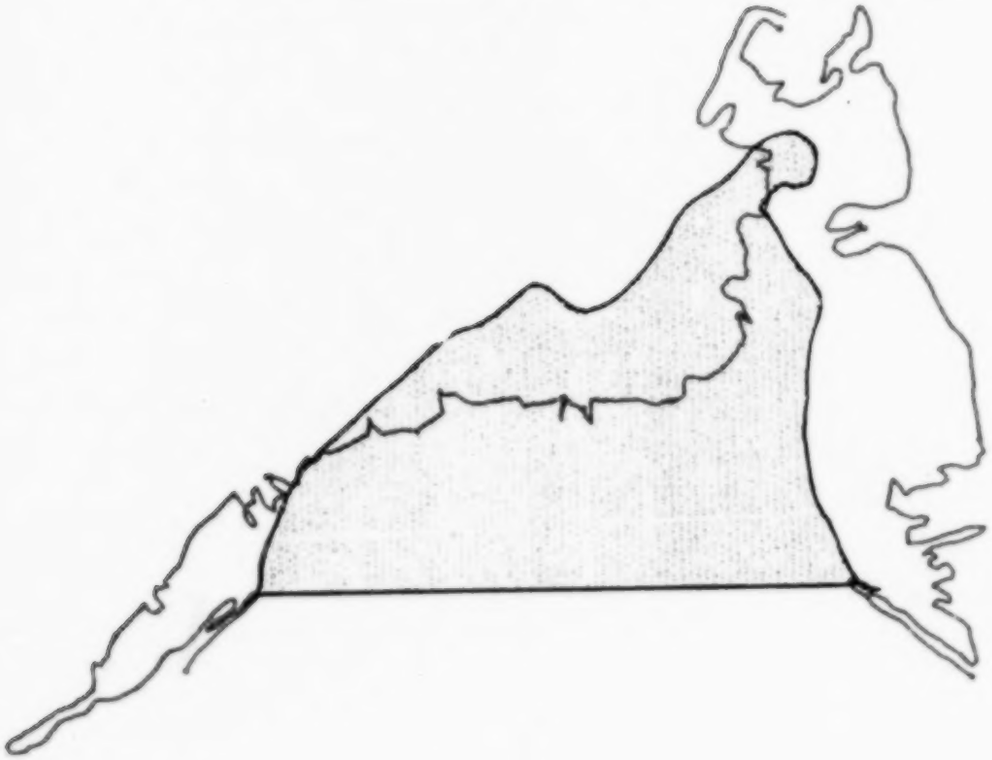


Figure R-6i

EAST BAY

LINES A, B, C AND D
Linear Depth of Penetration to Width of Mouth Ratios compared to Monterey Bay Data

	East Bay	Monterey Bay
Line		
A	.79 (depth) to 1 (mouth)	.64 (depth) to 1 (mouth)
B	.89 to 1	
C	1.02 to 1	
D	1.05 to 1	

Figure R-7. A comparison of "landlocked" data for Monterey Bay and East Bay alternative line claims, using the median line method. From actual uncontested measurements by David J. Morgan reflected in La. Exh. 229 (tr. 3864) (Method D) and 239 (tr. 3926) and admitted United States' Memorandum at 7. Note that each line by actual measurement exceeds the .75 ratio the government suggests for a V-shaped bay, United States' Memorandum at 12, note 14. Other methods of measuring depth of penetration are conceivable, but were not recommended as they did not measure the full depth of penetration. However, the data still generally favored East Bay. See La. Exh. 229 (tr. 3864). For the one method where the East Bay ratio was less than at Monterey Bay (Method A—perpendicular line from center of closing line) East Bay data approximately equaled or exceeded data for another recognized bay, Atchafalaya Bay. See La. Exh. 229 (tr. 3864).

of relationship between the width of its mouth to its depth upon a number of different closing lines . . . Report, at 27.

There is not only an absence of precedent cited by the government to support its arguments on geometry and shape. There is overwhelming precedent to contradict them. An example of such arguments relate to the alternative line claims of Louisiana in East Bay, which are styled "*surprising*," "suspect," and "artificially contrived," because they enclose areas that are seaward of the lines, allegedly "very odd basis" for defining a bay. See United States' Memorandum, at 12-13.

We ask the Court to look at any map of the Louisiana and Gulf Coast, *e.g.*, La. Exh. 2 (tr. 51) or maps 12 and 13 of the *National Atlas of the United States of America* or particular maps suggested in discussion below to compare the plain facts of precedent. Before discussing these particular precedents, it is well to clarify one point at the outset. No area is claimed by Louisiana as part of a bay lying seaward of the closing line of the bay that is not within the landform that forms the natural entrance point or headland of the bay, contrary to the implication of the federal argument. The geographic situation to which the federal argument relates is the presence of headland forms which curve inward and have areas of water behind them which, of course, form part of the bay they enclose.

As examples of this situation for well recognized bays, we make the following partial listing, not bothering to go beyond the immediate Louisiana coastal environ to delve into the U.S. Exh. 416D (tr. 6427) which would doubtless reveal dozens of other samples.

(1) Point au Fer (east of Atchafalaya Bay) encloses a discrete pocket bay which in major part is substantially seaward of the closing line from South Point of Marsh Island to Point au Fer recognized in *United States v. Louisiana*, 382 U.S. 288, at 291 par. 3(b) of that decree. See La. Exh. 194 (tr. 3605), for map.

(2) Lake Pelto is a discrete pocket bay which lies seaward of the closing line at Wine Island Pass approved in 394 U.S. 11, at 55-60, and the decree in *United States v. Louisiana*, 404 U.S. 388, which employs three-mile coordinate descriptions projected from a baseline extending from the eastern tip of the inward curving island known as Last Island. See La. Exh. 2 (tr. 51).

(3) In the area behind the inward curving island known as Timbalier Island which is the opposite headland of the closing line treated in the discussion of the precedents in (2) above, the discrete pocket bay area lies seaward of the closing line.

(4) This is true also as to the federal claim[27] at

---

[27] Louisiana does not agree that this is the correct location. See Ascension Bay arguments hereafter. We merely

Caminada Bay near Grand Isle within Ascension Bay. See drawing 5, United States Memorandum.

(5) That portion of Lake Borgne and Mississippi Sound lying seaward of the closing line from the tip of the St. Bernard Peninsula to the peninsula in front of Mobile Bay. The government successfully avoided the significance of the recognition of Mississippi Sound as inland waters in dealing with island fringe problems involved in the 1969 decision through using that line. See 394 U.S. 11, at 66-73, discussion of island fringe problems and Reply Brief for the United States, *United States v. Louisiana*, No. 9, Original, October Term, 1968, at 30, wherein the United States successfully distinguished the Mississippi Sound situation on the grounds that the islands in front of Mississippi Sound were islands in the mouth of a bay extending from the St. Bernard Peninsula to a peninsula at Fort Morgan in front of Mobile Bay. La. Exh .2 (tr. 51) shows this area.

On Headlands at East Bay

The least pronounced of the various headlands claimed by Louisiana is the western headland for Line A and the Master was satisfied it was clearly identifiable. It was shown in the testimony of Dr. Morgan and through the examination of sources of charts extending back to 1839 that the headland was the approximate point at which the natural land terminated. This was clearly identifiable on the nautical charts where

---

cite the government claim to show the inconsistency of government position.

the base of the jetty extensions could be found. Until modifications by the jetty work at Southwest Pass, it was even more pronounced in the past. See La. Exh. 23 tracing the Line A closure over time and Mr. Larimore's discussion of Dr. Morgan's testimony and chart information, in n. 21, *supra*. It corresponds as the eastern side of the "hump" feature at Southwest Pass to the "hump" feature which is the headland of West Bay (recognized by this Court). The bisector of the angle method supported its location, as mentioned above. Even Dr. Hodgson recognized that Southwest Pass and South Pass formed headlands of an indentation, Tr. 5373, and had many significant changes in direction along the shore of East Bay. Tr. 5372. In the rule of the California decree quoted *supra*, is the use of the outermost extension of those headlands which must be the *natural* entrance point under the Convention. The test of Shalowitz, 1 *Shalowitz*, at 64, of "some minor shore form" was satisfied as was the bisector of the angle test suggested by Shalowitz and approved by the Court in California.

All of this was present for the *least* "clearly" identifiable headland. Much more sustains the other headland such as the "apex of a salient rule." 1 *Shalowitz*, at 63.

As discussed *supra*, the Special Master not only found that there were identifiable headlands at East Bay, but found the presence of "clearly" identifiable headlands. See text discussion at n. 3 *supra*.

The many cartographic and shape comparisons

made earlier hardly make it essential to review the extensive evidence which supports the Special Master's finding on headlands, which is essentially a shape question. Inspection of the numerous graphic figures contradicts the federal arguments.

Dr. Hodgson's only reason for not admitting that the headlands related to and formed a closing line for East Bay was the argument that a headland had to relate to the indentation under consideration to enclose landlocked waters. Elsewhere in his testimony he had described his 45° test for objectively determining relationship of a headland to an indentation and agreed that objective test would control over his subjective opinion. Tr. 5503, 5282, 5414, 5275-76. This was an unsound test based on no legal authority. There was a conspicuous void in federal evidence using that test. Neither Dr. Hodgson nor other government experts used it at East Bay, although it was applied at other controverted headland areas. *Arguendo*, Louisiana applied that test to numerous maps through expert assistance which it is not practical to duplicate in the brief, but which, in the proceedings before the Special Master, thoroughly contradicted the federal position by proving that by the objective test Dr. Hodgson recommended, any of the East Bay headlands qualified. This is not to endorse his test but it does add to the fact that the Master was in a unique position to appraise such testimony and arguments. See original brief of Louisiana and the related extensive cartographic and mathematical material appearing in Vol. IV, Part 3 on East Bay, at 112-123 and cartographic

figures with measurements numbered E25 through E27. Also it was demonstrated that the first point where the 45° test would be satisfied would be at Line A which was also confirmed by the bisector of the angle method and technical methods shown to the Master on it. The Supreme Court of the United States should not have to go into all of this mathematical minutiae.

Even if there were a pronounced headland on only one side, there is precedent to show that an identifiable headland can be considered as present on the other side. See the Gulf of Kutch, treated by Strohl at 63, shown in Figure 13 of his work.

There is much in the record to sustain each alternative line. There is the testimony of Dr. Alexander Melamid, an eminent, *independent* academic geographer from New York University. Tr. 3322-32. There are the visual impressions of photographs and overflights. At Line A, for example, there is testimony on the mudlump island being in the process of joining the mainland shore, and much other detail supported the finding. See Appendix I for details of other headland evidence for each line.

See also testimony of Dr. Morgan, *e.g.*, tr. 2426, on the limit of the *natural* entrance points at the west side of Line A, tr. 2426, and on sections of the other headlands for East Bay closing lines, finding a "characteristic point," "a sandspit" at South Pass for Line A (see tr. 2652, *et seq.*, compare to 1 *Shalowitz*, at 64.)

The discussion at page 16 and following of the United States' Memorandum challenging the existence

of Cowhorn Island has already been treated, Louisiana Brief, at 102-114.

Map and Chart Problems

In a further effort to overturn the findings of fact on Cowhorn Island and at Pass du Bois (see U.S. Exception No. 2) by the Special Master, the United States argues that the Set of 54 Maps was prepared by the State of Louisiana and the United States in 1959 for the purpose of this litigation. This statement is not accurate. The Set of 54 Maps was prepared to determine the high and low-water lines along the coast of Louisiana prior to this litigation. At the commencement of the hearing before the Special Master, the United States and Louisiana stipulated that the Set of 54 Maps could be used in the hearing and correctly represented the present high and low-water lines along the Louisiana coast, with certain reservations. Where these reservations were made, large-scale charts officially required by the coastal states were to be looked to in order to determine the location of the low-water line. One of the reservations shows the Cowhorn Island area. The United States questions the Special Master's use of Coast and Geodetic Surveys represented by the 1200 Series of Charts to locate the low-water line along Cowhorn Island.

To understand the stipulation and reservations the Court must consider both Sections A and B of the Statement of Issues. Section A is Appendix A-1 to the Special Master's Report. Section B is Appendix B to the United States' brief.

In referring to Section A-6 of Section A (Report, at 58), it is interesting to note at the area from South Pass to Southwest Pass, East Bay is described both by United States Coast and Geodetic Chart No. 1262 and maps 5-6 of 8 of Louisiana Exhibit 119, at 11-13, and the issues are stated as follows:

> 6. From South Pass to Southwest Pass: East Bay. (U.S.C. & G.S. Chart No. 1272; Maps 4-6 of 8, La. Ex. 119 pp. 11-13.)
>
> (a) What are the means of proof recognized by the Convention on the Territorial Sea and the Contiguous Zone for ascertaining whether particular elevations are above the level of mean low water?
>
> (b) Does the Convention on the Territorial Sea and the Contiguous Zone control the kind of evidence that may be introduced in this case to identify low-water lines?
>
> (c) Is Louisiana entitled to submerged lands measured from such low-tide elevations or low-water lines as shown on Chart No. 1272 adjacent to South Pass but not shown on Map 4 of 8, irrespective of evidence to the contrary?
>
> (d) Are there low-tide elevations or low-water lines in East Bay adjacent to South Pass not shown on Map 4 of 8 but shown on Chart No. 1272?
>
> (e) Have there been changes in the coast line that would affect the future distribution of revenues heretofore accrued since June 5, 1950 and, if so, when did the changes become effective?
>
> (f) Within East Bay, are there any bays as

defined by Article 7 of the Convention on the Territorial Sea and the Contiguous Zone and, if so, where are their natural entrance points? Report, at 58.

In Part B, at 35, of United States' Brief, the parties accepted the Set of 54 Maps as the correct representations of the present low and high water lines, with certain exceptions. As to the excepted areas, there is no presumption of the correctness of the 54 Maps. As to the affected areas, the parties were entitled to show the low-water lines on charts recognized by the Convention as correctly found by the Special Master. In part B (d) Louisiana made the following reservations:

> (d) Louisiana reserves the right to show that in the area of East Bay, seaward of the mean low-water line reflected on Map 4 of 8, in addition to said mean low-water line there is an additional mean low-water line configuration which is marked on official large scale charts officially recognized by the United States, and which should be given full effect by the Master;
>
> (e) Louisiana reserves the right to show that islands or low-tide elevations exist south of the mouth of South Pass that were not reflected on Map 4 of 8;
>
> (f) It is agreed that the y coordinate of the mudlump east of Pass a Loutre, shown on Map 2 of 8, La. Ex. 119 p. 9, as x=2,754,100, y=189,915, should be y=186;915.

This agreement to accept as correct the water lines shown on the set of 54 maps does not preclude the parties from introducing evidence, not

inconsistent with those maps, of geological, physical, or other facts, including but not limited to water depths, *inland portions of water lines left incomplete on the set of 54 maps, particularly inclusion of tributary waters in measurements for the semicircle test*, and conditions that existed prior to the surveys on which the 54 maps were based. Also, the parties may show the history and usage of these areas. Neither will acceptance of the 54 maps for the purpose stated preclude the parties hereafter, on future motions for entry of further supplemental decrees to have only prospective effect, from showing changes from the conditions on the 54 maps. Neither does this agreement imply that the parties accept as correct the methods used in making the 54 maps. (Emphasis added.)

From the above, it is clear that both Louisiana and the United States reserved rights to show low-water lines in particular areas on large-scale charts. There was no agreement or understanding that the Set of 54 Maps had any effect in the excepted area. This is the basis on which the case was tried as found by the Special Master in his Report. The Set of 54 Maps and the charts were all prepared by some department of the United States.

This is the reason the Special Master made the following finding:

> However, for purposes of this litigation the parties have stipulated that the applicable high and low-water lines shown on a set of 54 maps filed with the Special Master may be taken as correct, except where the right is specifically reserved

by one of the parties to show otherwise. In most cases, therefore, it is unnecessary to go beyond these maps to establish the low-water line along the Louisiana coast. Where this reservation has been made, large-scale charts officially recognized by the coastal state are to be looked to in order to determine the location of the low-water line. There appears to be no dispute that a chart whose scale is 1 to 80,000 or larger is a large-scale chart within the meaning of the convention. However, it appears that even these large-scale charts are not conclusive in every instance. For example, in Note 48 to the second *Louisiana* opinion (394 U.S. 11, 40-41), the Court specifically leaves to the Special Master the determination as to the existence or non-existence of certain islands located within Atchafalaya Bay, and also an artificially created spoil bank at Pass Tante Phine, just to the north of West Bay. Some of these formations appear on large-scale charts officially recognized by the coastal state and yet the Court indicates that their actual existence may be questioned. Therefore, the Court must be saying as a general principle, as insisted by the United States, that at least in certain instances the Special Master may look beyond the charts of the area involved to the actual facts. If the United States is to have the benefit of this rule, it would appear that the State of Louisiana should also have that benefit in areas where it has reserved a special exception to the accuracy of the set of 54 maps, and where the departure from the large-scale charts of the area, if it exists, is so substantial as to affect materially the location of the coastline. (Report, at 24, 25).

There were many discussions during the trial concerning the 54 Maps, none of which justify the position by the United States.[28]

Incidentally, the drawings used by the United States in its arguments are not based on the Set of 54 Maps. Contrary to the impression given in the United States Memorandum, at 8, that the government was urging the Court to reach its conclusions on the basis of the physical situation on "stipulated maps." The government drawings materially departed from the stipulated maps, *e.g.*, the absence of any island at the mouth of South Pass. Much else in the government arguments makes the total arguments highly unconvincing. For example, the objections to the use of the 1200 series charts[29] includes the objection that they are not sufficiently large scale to reflect all necessary detail. Yet, when the government is trying to have this Court reverse the Special Master's findings on the detail of headland selections, the government takes the charts and reduces them to a much smaller scale, eliminating detail, and suggesting the record should not be examined.

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[28] See tr. 4530 of threat of United States to withdraw alleged concession of Chandeleur Sound and Breton Bay unless Louisiana amended stipulation. See record for discussion concerning stipulation, Tr. 4525-4545; Tr. 4658-4665; Tr. 2488-2507, 6421, 6435, 5599, 5667, 5668, 2740 and 6095.

[29] The government here was really objecting to use of the Convention for Article 7 (3) requires use of charts.

UNITED STATES EXCEPTION NO. 2 (PASS DU BOIS)

The evidence on the Special Master's findings of fact here is treated under Louisiana Exception 5, and in the discussion of Cowhorn Island matters. See Louisiana Brief, at 102 *et seq.*, and 144 *et seq.*

See also discussion of the map stipulations *supra*, in response to U. S. Exception No. 2.

UNITED STATES' EXCEPTION NO. 3 (ASCENSION BAY)

The United States excepted to the findings of fact by the Special Master that the Ascension-Caminada-Barataria Bay Complex constitutes an overlarge bay. (Section III (6), Report, at 45-48). The finding of fact by the Special Master reads as follows:

> All of the evidence in the record indicates that [Ascension Bay constitutes an over-large bay]. Certainly its waters are landlocked, or, as sometimes described, *Inter Fauces Terrai*, within well marked natural entrance points. This is supported by the ratio of its depth of penetration to the width of its mouth, for it is almost perfectly semicircular in shape, the classic form of a bay. In this respect, it bears a startling resemblance to Monterey Bay, which was held to be a true bay in the California case.

This finding resulted from extensive evidence introduced both by the United States and Louisiana before the Special Master.

The United States realizes, in order to succeed with this exception, it must have the Court overturn its holding in the 1969 opinion:

> We have concluded, on the other hand, that the area of "Ascension Bay" does include the Barataria Bay-Caminada Bay complex and therefore meets the semicircle test. Those inner bays are separated from the larger "Ascension Bay" only by the string of islands across their entrances. If those islands are ignored, the entrance to Barataria and Caminada Bays is sufficiently wide that

those bays and "Ascension Bay" can reasonably be deemed a single large indentation even under the United States' approach. Article 7(3) provides that for the purposes of calculating the semicircle test, "[i]slands within an indentation shall be included as if they were part of the water areas of the indentation." The clear purpose of the Convention is not to permit islands to defeat the semicircle test by consuming areas of the indentation. We think it consistent with that purpose that islands should not be permitted to defeat the semicircle test by sealing off one part of the indentation from the rest. Treating the string of islands "as if they were part of the water area" of the single large indentation within which they lie, "Ascension Bay" does meet the semicircle test. 394 U.S. 11, at 52-53. *Cited in* Report, at 45, 46.

What the United States is arguing is that the Court must first look at Ascension Bay, disregarding the Caminada-Barataria Bay Complex and the screening islands and only then, if the area is determined an overlarge bay, should the Court consider the Caminada-Barataria Bay Complex (and the screening islands) as water areas in determining whether Ascension Bay meets the semicircle test as an overlarge bay. See United States' Memorandum, at 26 n. 28. This same argument was advanced and rejected by the Court in its 1969 opinion.

Noting the weakness of this argument, the United States urges the Court to overrule the Special Master's findings without reference to the record and based solely on Drawings 5 and 6 in its brief. These drawings

do not fully and accurately portray the total bay area as we will demonstrate in this memorandum.

An effort to sustain this argument was advanced in 1968 and was rejected by this Court in the 1969 opinion. See the Memorandum in Support of the Motion of the United States for Entry of A Supplemental Decree as to the State of Louisiana (No. 2), where the United States stated at 73:

> To qualify as inland waters under Article 7 of the Convention, a bay must be "a well-marked indentation." [30] This means that it must have unity of configuration.

The United States then[31] went on to argue that the inner bays were distinct entities sharing no unity of configuration with the outer waters. These remarks occurred in the context of an additional argument that the absence of unity of configuration was fatal to Louisiana's semicircle test claims. The argument at page 73 of the memorandum continued:

> The test could be met only by combining the area of those waters with the waters of the inner bays —Caminada, Barataria, Bastian, and others— whose entrances breach this section of the shore. Such combination is not permissible where, as here, the inner bays are distinct entities, almost

[30] Dr. Hodgson, the Geographer of the Department of State, later testified before the Special Master: "It [Ascension Bay] is certainly a well marked indentation of the coast." Tr. 5359. This testimony by the Government's principal technical expert amply contradicts the Government arguments made in 1968 and now reiterated, United States' Memorandum, at 28-29.

[31] In 1968.

completely shut off from the open waters of the Gulf and sharing *no unity of configuration with those waters*. In applying categorical legal concepts to the infinite variations of actual geography, there are often situations where there is room for differences of opinions; but it is hard to imagine any situation that would present a clear example of well-defined inner bays almost completely isolated and utterly distinct from the open waters outside their entrances. (Emphasis added.)

In answer to this argument, this Court, in its 1969 opinion, said:

> But [the United States] denies the existence of any rule that *all* tributary waters are so includible. Article 7(2), it emphasizes, refers to "that indentation." The inner bays can be included, therefore, only if they can reasonably be considered part of the single, outer indentation. And that cannot be said of inland waters which, like the Vermilion Bay and Barataria Bay-Caminada Bay, are wholly separated from the outer body of water and linked only by narrow passages or channels.
>
> For purposes of this lawsuit, we find it unnecessary to provide a complete answer to the question posed by the parties. 394 U.S. 11, at 51, 52. (Emphasis in original.)

It was after this statement when this Court held:

> We have concluded, on the other hand, that the area of "Ascension Bay" does include the Barataria Bay-Caminada Bay complex. . . . If [certain islands which the Court found should be ignored] are ignored, the entrance to Barataria and Caminada Bays is sufficiently wide that those bays and "Ascension Bay" can be reasonably be deemed a single large indentation *even under the United States approach*. 394 U.S. 11, at 52, 53. (Emphasis added.)

Even Dr. Hodgson admitted that Ascension Bay was a well marked indentation. (Tr. 5379).

This Court, in reaching the above holding on Ascension Bay, quoted with approval a paragraph from the Sovereignty of the Sea by Dr. G. Etzel Pearcy, which reads as follows:

> [T]he water of bays within bays may be included as water surface of the outer bay in determining the dimensions of any coastal indentation. Sovereignty of the Sea, United States State Department Geographic Bulletin No. 3, p. 11 (1965). *Quoted in* 394 U.S. 11, at 51.

Dr. Pearcy's observations were not limited to bays within bays of coastal indentations whose inner bays undefined by "geographic" standard are formally part of the outer indentation. The publication of the State Department expressed Dr. Pearcy's opinion that such inner bays' waters may be included in determining the dimensions of *any* coastal indentation. We repeat, *any* coastal indentation. Note that Dr. Pearcy's remarks were *not* confined to the semicircle test but related to determining the dimensions. This would include semicircle test considerations, but not be limited to it.

There is no bay that we have found which any

court has determined to have satisfied the semicircle test requirement, but which has been held by the court not to satisfy other Article 7 criteria.

Comparison of Ascension Bay with Monterey Bay

The Master was correct in comparing Ascension Bay to Monterey Bay. After fully quoting the entire text of Article 7 in its footnote, this Court, in the *California* case, stated:

> Applying these tests to the segments of California's coast here in dispute, it appears that Monterey Bay is inland water and that none of the other coastal segments in dispute fulfill these aspects of the Convention test [referring to the 24 mile line and semicircle aspects of the Convention test]. We so hold. *United States v. California*, 381 U.S. 139, at 169-70.

The decree entered in the *California* case recognized Monterey Bay as inland waters. 382 U.S. at 450. Figure R-8 is a graphic exhibit Louisiana has prepared to compare the configuration of Monterey Bay with Ascension Bay, which was considered by the Special Master. Actually the base map of the graphic exhibit does not adequately reflect the full extent of the waters entering into the complex, *e.g.* waters north of Little Lake are not shown. Also, the watery, quasi-land nature of the areas shown as land on this small-scale map does not adequately appear. Thus, the comparison is even more markedly in favor of Ascension Bay than the illustration suggests. The base map is from an exhibit employed in the brief before this Court

which led to the 1969 *Louisiana Boundary Case* opinion. 394 U.S. 11. It had the Grand Isle-Grand Terre Islands which lie between Caminada and Barataria Bays and the outer part of Ascension Bay removed to graphically reflect the concept of Article 7 (3) which states in part,

> Islands within an indentation shall be included as if they were part of the water area of the indentation.

The validity of application of that concept to the Grand Terre-Grand Isle situation in Ascension Bay was recognized by this Court in the 1969 decision:

> We have concluded, on the other hand, that the area of "Ascension Bay" does include the Barataria Bay-Caminada Bay complex. . . . 394 U. S. 11, at 52.

See also La. Exh. 104 (Tr. 2818) for a color copy of the base map used in Figure R-8 distinctly showing how Barataria and other inner waters form part of Ascension Bay. The base map is from a small-scale map, and available small-scale maps had not been revised to show the extent of massive subsidence and increased water area of inner bays. The comparison is therefore biased in favor of the United States' position. Also, for purposes of argument, we have placed Monterey Bay's mouth approximately at the mouth of Ascension as claimed by the Federal Government.

The comparison greatly favors Ascension Bay as notations on Figure R-9 show. Results would not materially differ if Louisiana's closing line claim em-

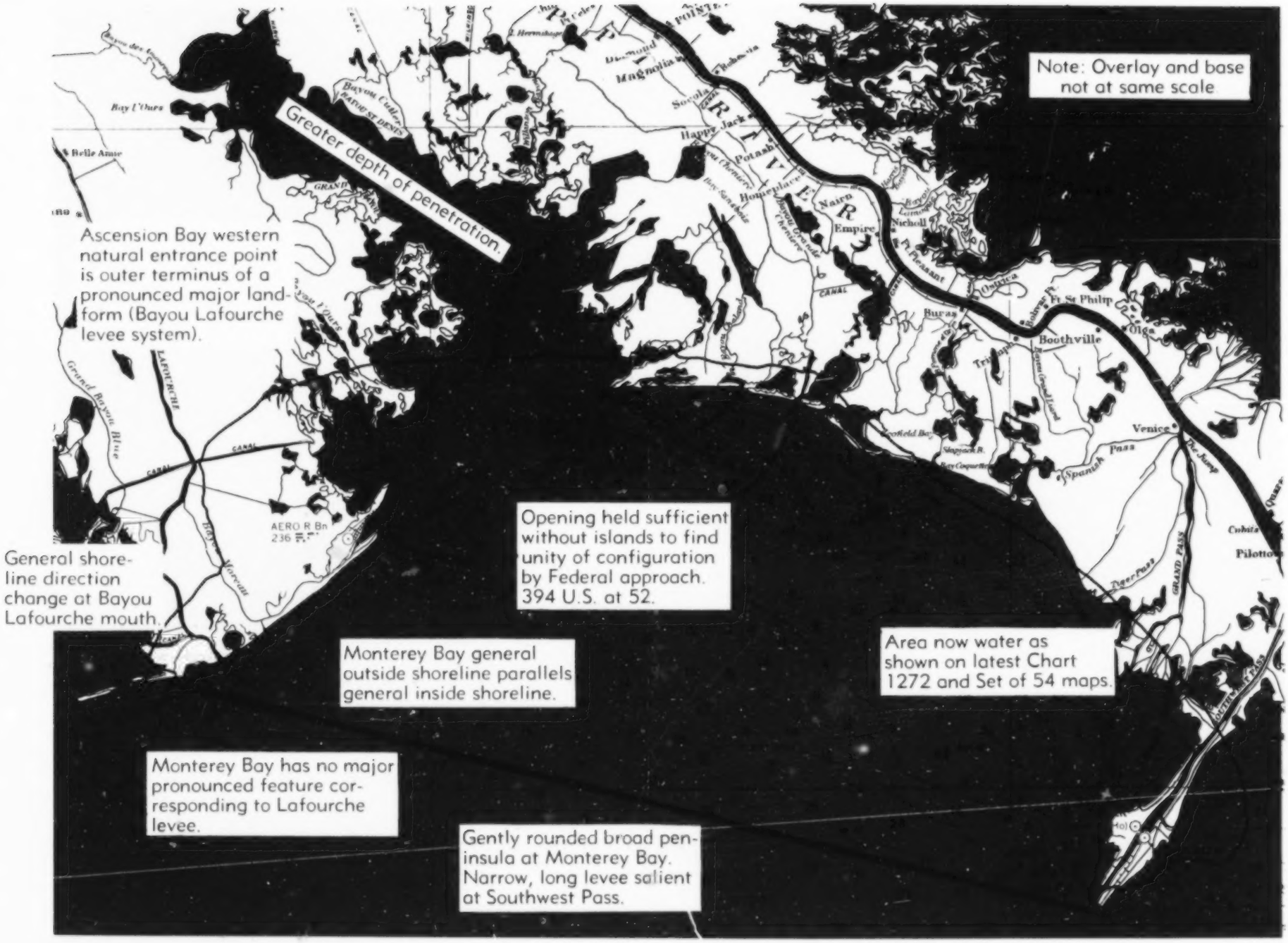


Figure R-9. General summary of major aspects of Monterey Bay and Ascension Bay graphic comparisons.

ployed using the red line shown on La. Exh. 104 (Tr. 2818).

As to the configuration of Monterey Bay superimposed upon a small map of Ascension Bay area, it should be noted that the size of Ascension Bay is not in fact the same at its mouth as Monterey Bay. The scale of the superimposed configuration of Monterey Bay was modified to facilitate the graphic comparison and render the mouths of equal length on the illustration. See size discussion below.

Comparison of Ascension Bay with Unnamed Alaskan Bay in United States Exhibit 416 D

United States Exhibit 416D was a last-second introduction made over the objection of Louisiana after the end of Louisiana's Baton Rouge rebuttal presentations. (See Tr. 6414-6427) It is replete, upon close study, with many examples of approaches employed by the interdepartmental committee (which included Dr. Hodgson, whose applications the committee approved "provisionally") that are contradictory to opinions expressed by Dr. Hodgson or taken by the United States in these oil proceedings. We persist in our objections to the total exhibit, but use features of the exhibit to show how inconsistent the United States' position is on bay closure lines.

A particular map illustrative of the contradictory impact of U.S. Exh. 416D (Tr. 6427) is chart 9475, found as the fourth chart near the end of the volume of maps comprising the exhibit. Part B of Figure R-10 on the following page reflects the configuration and

Figure R-10. Comparison of the configurations of (A) Ascension-Barataria Bay (from La. Exh. 104 (tr. 2818) with "screening islands" reconstructed within the bay) and (B) an unnamed bay in Alaska, the closing line of which is taken from U.S. Exh. 416D (tr. 6427), Chart 9475.

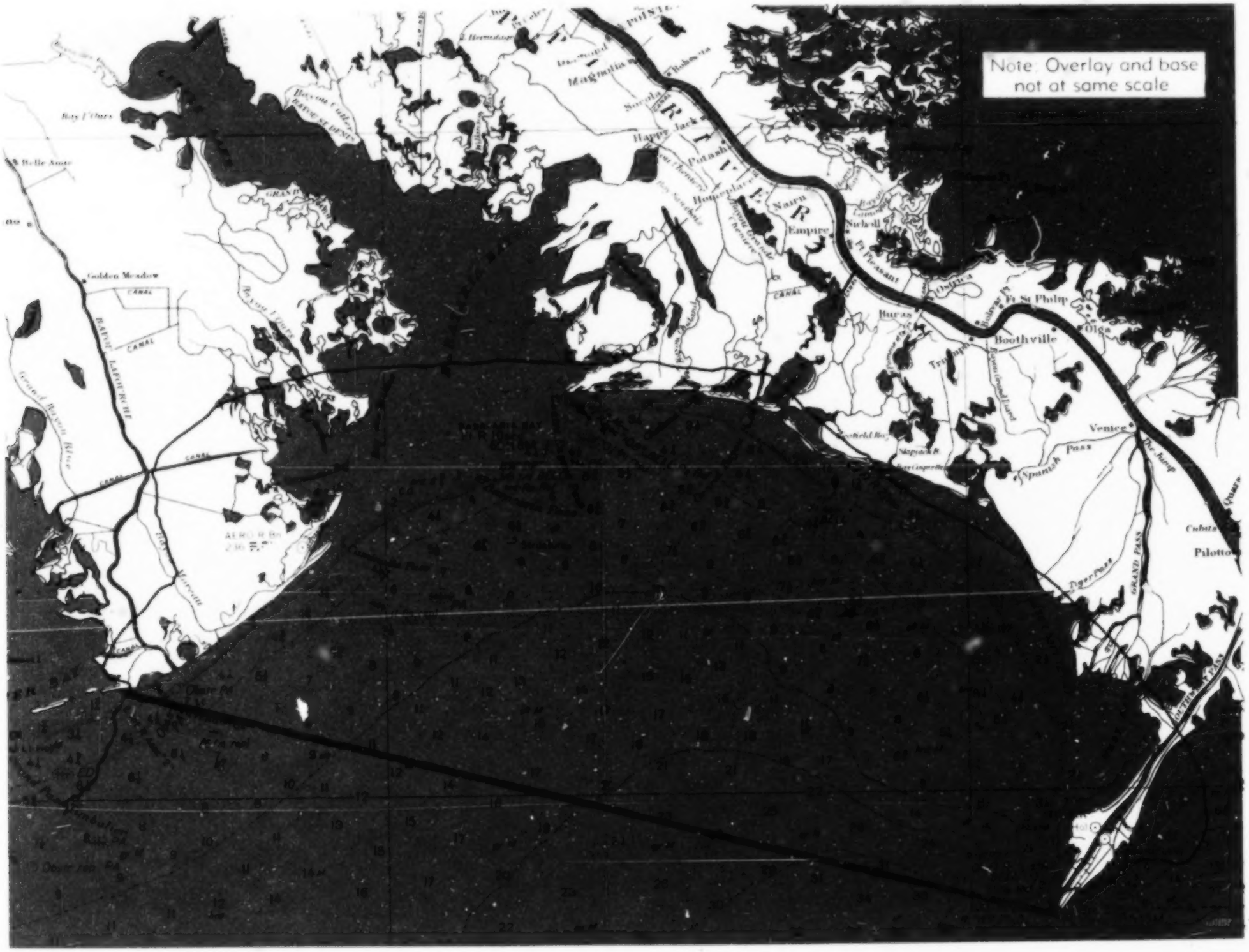


Figure R-8. Superimposition of Monterey Bay with bay closure recognized in decision of United States v. California, 381 U. S. 139 (1965), and in the decree, 382 U. S. 448 (1966) on a portion of a base map employed in La. Exh. 104 (tr. 2818) entitled "Ascension Bay-Barataria Bay Complex as it appears with islands removed to show the actual area of the bay under Article 7 of the Geneva Convention" and showing the outermost proposed overlarge bay closing line. See also Sheet 48 of La. Exh. 21 (tr. 355-356).

closing line recognized for an unnamed bay in Alaska found on chart 9475; Part A of the figure shows the general configuration of the Ascension-Barataria Bay area with the Grand Terre-Grand Isle area reinserted. Of course, due to scale matters and base map limitations, the full extent of water area of Part A of Figure R-10 is not adequately shown thereby making the exhibit conservative in its effect.

The parallel between the two configurations is striking, with one exception which is discussed below. The most obvious common feature is that both configurations have an island situation separating inner and outer parts of a similarly shaped indentation. In Alaska, this did not deter recognition of the indentation as a bay by Dr. Hodgson and other Federal Government experts. It should not deter recognition of Ascension Bay as a bay. It certainly did not deter the Special Master.

Like treatment for Alaska, California, and Louisiana would accord with the spirit of a single coast line for administration of the Submerged Lands Act. See 394 U.S. 11, at 34, *quoting*, *United States v. California*, 381 U.S. 139, at 165.

Ascension Bay — More "Well-Marked" Than Two Recognized Bays

An exception to the similarity of Ascension Bay to other recognized bay configurations relates to the more well-marked character of Ascension Bay. This observation is valid for comparisons to both the Alaskan bay, shown in Part B of Figure R-10 and Monterey

Bay, outlined on top of Ascension Bay in Figures R-8 and R-9.

At the left side of the map on Part B of Figure R-10 and on Figures R-9 and R-8 there is a less-pronounced or well-marked terminus or natural entrance point in these recognized bays (the Alaskan bay and Monterey Bay) than is present for Ascension Bay. The shoreline in Part B of Figure R-10 (the Alaskan Bay) is relatively smooth and extends well below the left terminus. The same comment applies to the Monterey Bay outline superimposed on Figure R-9. Contrast the landform bounding or marking the left side of the Ascension bay indentation. It terminates rather sharply by comparison, swinging west, thus marking the limit of the indentation much more clearly and precisely than on either of the other two indentations compared thus far. The only feature at Monterey Bay that is arguably more favorable to Monterey Bay is the fact that its shoreline swings in slightly more sharply inside of the closing line but as the Alaskan Bay feature plainly demonstrates (at the left side of Part B of Figure R-10), such a feature is certainly not required. Like Ascension Bay (see West Bay area at Southwest Pass) the Alaskan Bay does have a concavity to the right side of the map (see right side of Part B of Figure R-10). The main difference between the Southwest Pass configuration and the West Bay configuration compared to the right side of the Alaskan Bay relates to the much more sharply marked character of Ascension Bay. The Southwest Pass configuration is a more pronounced or identifiable salient with a much more

sharp, or identifiable apex; it is obviously much more well-marked; and the concavity formed by West Bay is much more penetrating, especially when erosion of recent decades is considered.

When more recent map information is taken into account, Ascension Bay is even more strongly landlocked and sharply identifiable than Monterey Bay. See *e.g.*, Figure R-11, a reproduction of an earlier graphic comparison with additional water area added to reflect areas now substantially eroded as shown on the Set of 54 Maps and latest charts. Undoubtedly even more area has eroded by now.

Other details of the comparison show a striking similarity between Ascension Bay and the unnamed but recognized Alaskan bay in Figure R-11. There is an elongated landform on the right side. There are on both the left and the right sides of the inner part of the indentation similarly shaped features with an island screening situation separating outer and inner parts.

The above has shown some of the more bay-like characteristics of Ascension Bay by comparison to recognized bays, especially its more "well-marked" "landlocked" nature. We now turn to a difference the United States apparently claims causes Ascension Bay to *not* qualify as a bay.

In answer to the United States' argument as to size

The mouth of the Ascension Bay complex from

Southwest Pass to the mouth of Bayou Lafourche is approximately 43 nautical miles in width, whether the United States' artificial entrance point position or Louisiana's natural entrance point position is used. See La. Exh. 104 (tr. 2818) and testimony of Mr. Whitaker, tr. 3966 *et seq.* In our research of legal materials, we sought examples of bays for either negative or positive comparisons to deal with federal contentions as to the impact of this 43-mile size. We found no example in either the jurisprudence nor in the legal literature suggesting that any particular indentation of 43 nautical miles at its mouth was *too large* to be considered an overlarge indentation although it had shape characteristics comparable to smaller, recognized bays. We did, however, find striking examples of indentations with mouths as large as or larger than a 43-mile mouth to which the overlarge bay concept of Article 7 (5) was applied, under circumstances where configuration was either comparable or even less bay-like than Ascension Bay.

Comparison of Ascension Bay with Moray Firth

Ascension Bay compares quite favorably with Moray Firth which was involved in the Moray Firth litigation of 1906. The U.S. Navy authority, Commander M. P. Strohl, utilized Moray Firth in *International Law of Bays*. Figure 15 of that work is an illustration of an indentation to which the overlarge bay concept would be applied. That illustration is produced *infra*, as Figure R-12 of this brief. The line from Duncansby Head to Rattray Head was recognized as a line

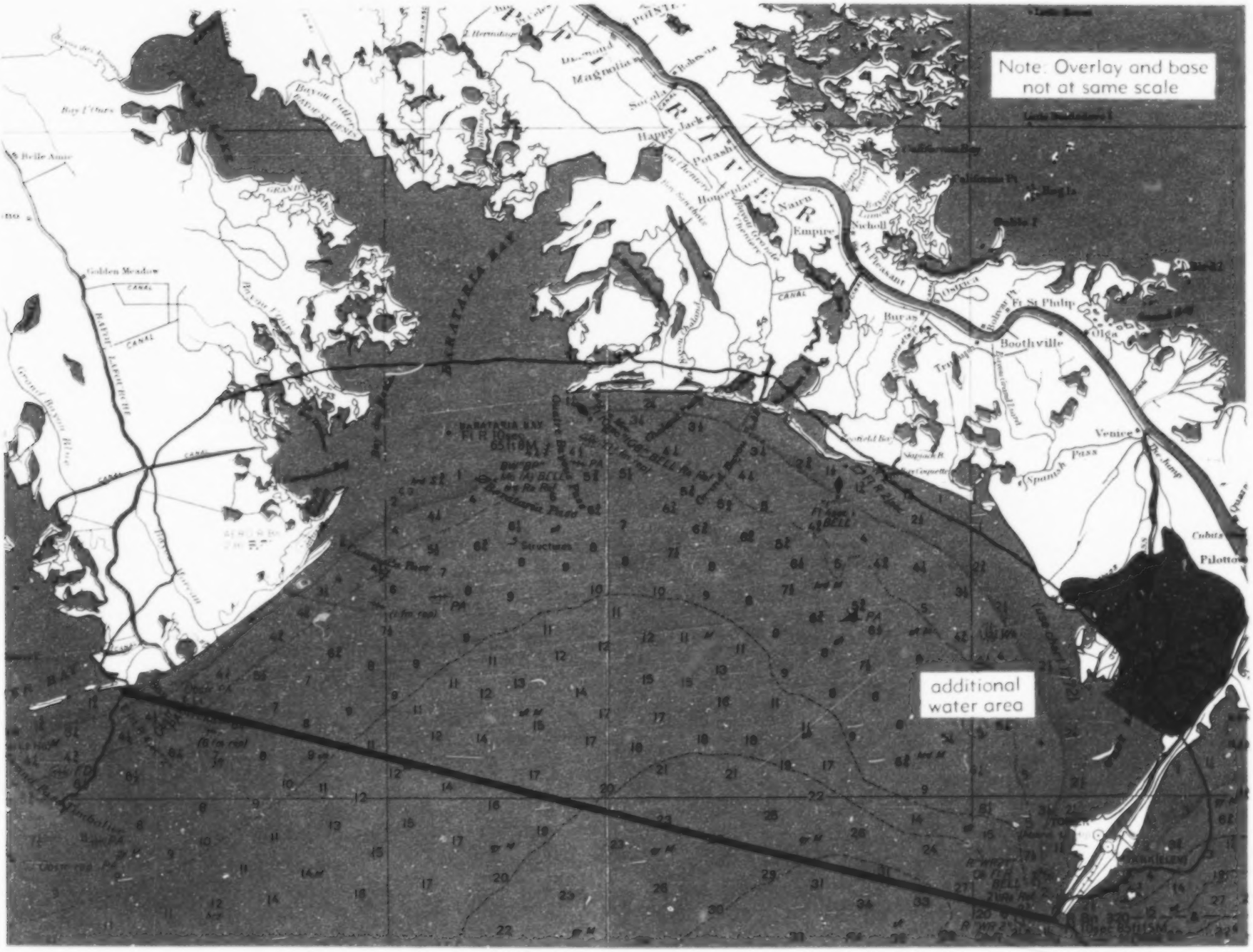


Figure R-11. Reproduction of exhibit comparing Monterey and Ascension Bays with modifications in West Bay area to conform generally to additional area which is now substantially water as reflected by Maps 5 and 7 of the Set of 8 of the Set of 54 Maps (reduced-size copies in La. Exh. 353 (tr. 6404)) and 25th edition of Chart 1272 (August 15, 1970), U.S. Exh. 362 (tr. 6365).

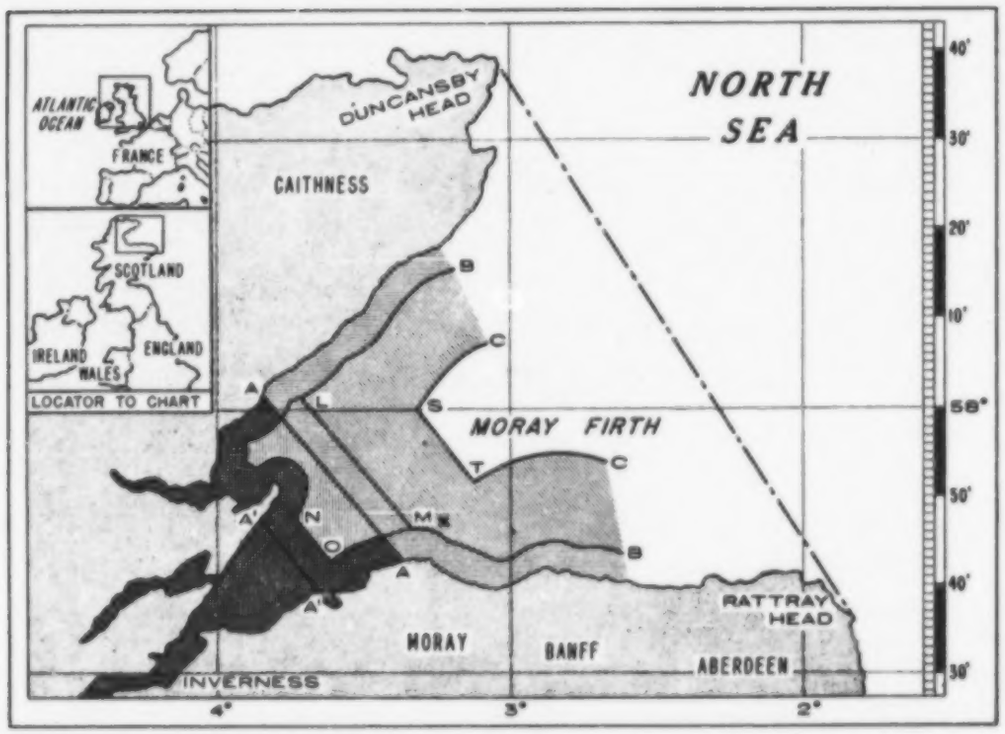


Figure R-12. Reproduction of Figure 15 from Commander Mitchell P. Strohl's book, *The International Law of Bays*, showing the 73.5 mile closing line between natural entrance points of Moray Firth, Scotland.

MORAY FIRTH, SCOTLAND

FIG. 15

LEGEND

AA – 24-mile closing line.
BLMB – Outer limit of 3-mile marginal belt using 24-mile closing line.
A'A' – 10-mile closing line.
BLNOMB – Outer limit of 3-mile marginal belt using 10-mile closing line.
CSTC – Outer limit of 12-mile marginal belt using 24-mile closing line.
– – – –Line *inter fauces terrae*, as described in Moray Firth Case of 1906.
X – Site of alleged offense of Emmanuel Mortenson in Moray Firth Case of 1906.

"inter fauces terrae" or, "within the jaws of the land." Rattray Head and Duncansby Head are both less pronounced, less identifiable than either the mouth of Bayou Lafourche or Southwest Pass. A graphic comparison demonstrates this. We have taken the shoreline from Part A of Figure R-10 in the comparison of Ascension-Barataria Bay to an unnamed Alaskan Bay and compared it to the graphic representation of Moray Firth contained in the *Strohl* illustration, Figure R-12, labeling the resultant comparative exhibit as Figure R-13. The illustration from Commander Strohl's book was modified to eliminate details irrelevant to a comparison of shoreline configuration. The Moray Firth shoreline appears as a heavy black line, as do the closing lines of both Moray Firth and Ascension Bay. The federal unnatural entrance point closing line is used *arguendo only* on all of these comparative exhibits merely to avoid argument, and not in recognition of any propriety of using artificial entrance points. Results do not differ if natural points are used. The scale of the maps in Figure R-13 was modified in order to show the graphic comparison conveniently. The Moray Firth shoreline outline was reproduced and then superimposed upon Part A of Figure R-13. The Moray Firth shoreline on the illustration has a mouth on the map (not in true distance) approximately comparable in width to that of Ascension Bay, thus permitting comparison to focus purely upon configuration rather than size considerations. *In fact, the mouth of Moray Firth is markedly larger than the mouth of Ascension Bay. As shown in Figure R-12, the reproduc-*

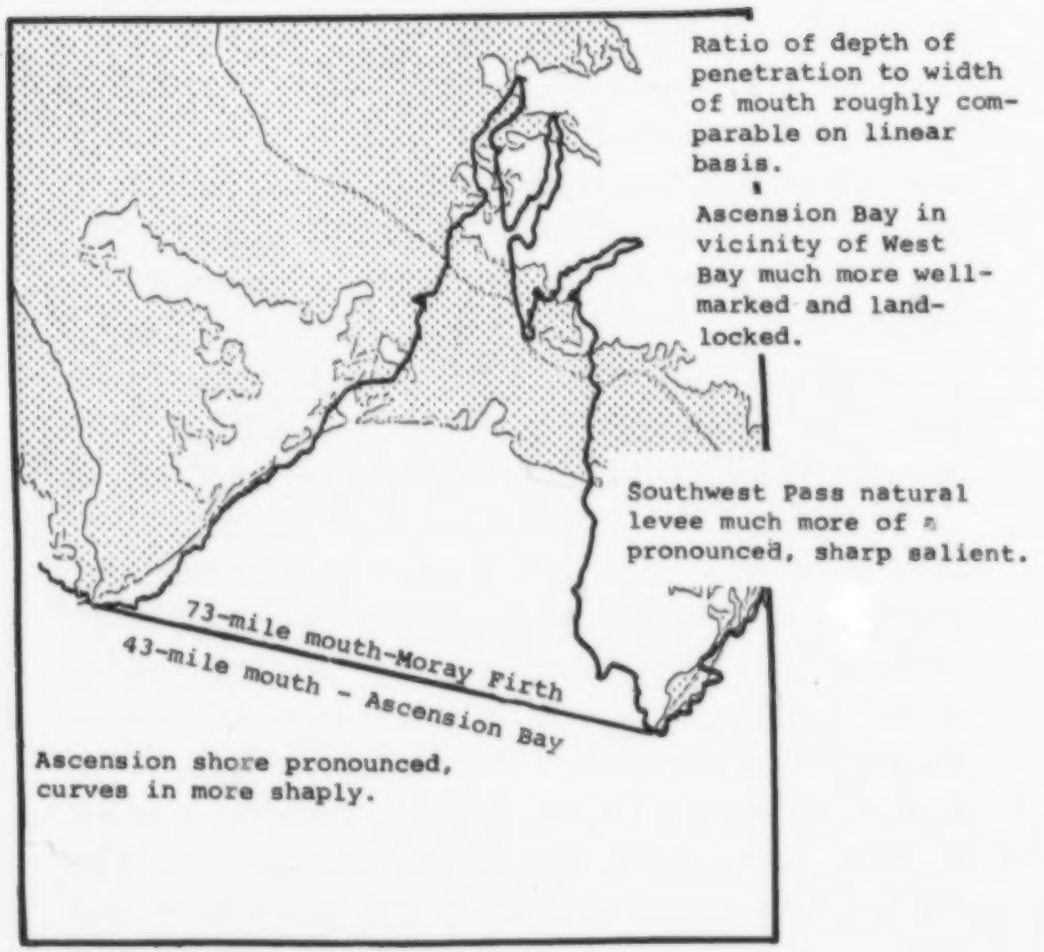


Figure R-13. Ascension Bay-Moray Firth.

tion from Commander Strohl's book, the Line found to be Inter Fauces Terrae as described in the Moray Firth Case of 1906 is 73.5 miles wide. Proceeding from the left side of the illustration, several aspects of the comparison are apparent. First considering the natural entrance point at the left side, the Bayou Lafourche landform is decidedly more pronounced than the Rattray Head landform of Moray Firth. Note how the shoreline of Rattray Head almost parallels the closing line of what was considered *inter fauces terrae* to the left of the left Moray Firth natural entrance point. As we leave that left natural entrance point again, the angle of the shoreline of Ascension Bay turns inward more sharply than that which is to the right of the *inter fauces terrae* closing line of Moray Firth. The direction of the shoreline parallels part of the shore southwest of Caminada Pass.

The principal difference in the configuration of Moray Firth becomes that of the angles at which the inner waters lie. In Ascension Bay the inner waters (only partly shown—see La. Exh. 104, tr. 2818, for a more complete view of the full extent of the tributary waters of Ascension Bay) turn to the left, whereas they penetrate more at right angles in the case of Moray Firth. That this is a distinction without a difference is apparent from the Supreme Court's treatment of Vermilion Bay, which also lies much to the left of the closing line in front of Atchafalaya Bay. Yet the Court treated it as associated not with outer Vermilion Bay but with Atchafalaya Bay. See 394 U.S. 11, at 52:

> Yet Vermilion bay is itself a part of the much larger indentation which includes West and East Cote Blanche Bays and Atchafalaya Bay, and which opens to the sea between Marsh Island and Point au Fer.

Of course, the ultimate proof of the irrelevancy of that difference is the Supreme Court finding as to Ascension Bay itself:

> We have concluded, on the other hand, that the area of "Ascension Bay" does include the Barataria-Caminada Bay complex. . . . *Ibid.*

Comparing the eastern, or on the map the right, side of Ascension Bay with the right side of Moray Firth, shown on the overlay, it is evident that the major differences are that Ascension Bay curves in more and has more sharply pronounced natural entrance point on its right side, characteristics that quite favorably show that Ascension Bay with its width of 43 nautical miles as its mouth has in this respect even more land-locked bay-like character than Moray Firth, but such a "side pocket" is unnecessary. Of course, the landform at Southwest Pass is much more pronounced than the Duncansby Head landform. At this point, it should be noted in explanation of these graphic aids that for closing line comparison purposes we have used what we assume is the United States' position—utilization of jetties as at Southwest Pass, rather than using the truly natural entrance points of the indentation. This is not to be construed as any recognition of the correctness of the utilization of artificial entrance points and is merely an assumption *arguendo* to avoid irrelevant contentions. However, we are sure that the results of the analysis made above would not be materially different if one were to use the "hump" at Southwest Pass instead of the jetties.

Comparison of Ascension Bay to the Thames Estuary Bay

Another strikingly interesting bay for comparison with Ascension Bay is the Thames Estuary bay. This is the subject of the opinions styled *Post Office v. Estuary Radio, Ltd.* 3 All E.R. 663 (1967). Measurement information was given.

> The diameter of the semi-circle from North Foreland to Orford Ness is *42.02 sea miles*. *Id.* at 667.

This is remarkably close to the closing line distance of 42.78 nautical (sea) miles or 43.42 nautical miles depending upon whether an outer or an inner closing line is used for Ascension Bay. See the table reflected on the first map La. Exh. 104 (tr. 2818). This adds interest to a comparison of the relative characteristics of these indentations. Figure R-14 shows two closing line contentions for the Thames Estuary (a third contention, Orford Ness to Foreness Point, is near line 1 and was not shown to avoid unnecessary complexity.) involved in the *Thames Estuary Case.*

Data on semicircle test measurement information for the Thames Estuary is reflected in 3 All. E.R. 663, at 667. The hypothetical semicircle for Closing Line 1 (North Foreland to Orford Ness) calculated area was reported at 693.380 square sea miles. The area of the water enclosed by that line was less than the hypothet-

ical area by 1.630 square sea miles. Another shorter line, Orford Ness to Foreness Point, met the semicircle test only by counting waters 84 miles upstream. See 3 All E.R. at 673 *et seq.*, where the trial court discussed and approved this area measurement, and discussion of area measurement in Louisiana's Exceptions to the Report of the Special Master, Argument III. In the case of Ascension Bay, as the data in La. Exh. 104 proved by the testimony of the engineer, Mr. Whitaker, tr. 3966 *et seq.* reflects, there is much more ease in satisfying the semicircle test. Closing Line 1 on La. Exh. 104 has a hypothetical semicircle of 610,053 acres and the area measured (not bothering to count all tributaries, certainly not going up stream 84 miles) exceeded that hypothetical semicircle by 126,927 acres. This is in excess of approximately 20% in the case of Ascension Bay. Compare this to the Thames Estuary line which barely failed the test at Closing Line 1 and which required going 84 miles upstream to satisfy the test for a line very near Closing Line 1, which the trial court approved as satisfying the "well-marked", "landlocked" standards of the Convention.

Comparing Closing Line 2 of the Thames Estuary with Ascension Bay, at the left side the natural entrance point of Ascension Bay is more clearly a pronounced geographical feature or headland than is Foreness Point. On the right side, the Southwest Pass levee system is a much more pointedly shaped and well-marked feature than the Naze. An interesting comparison of the Naze with Bayou Lafourche natural entrance Point of Ascension Bay can be made, however,

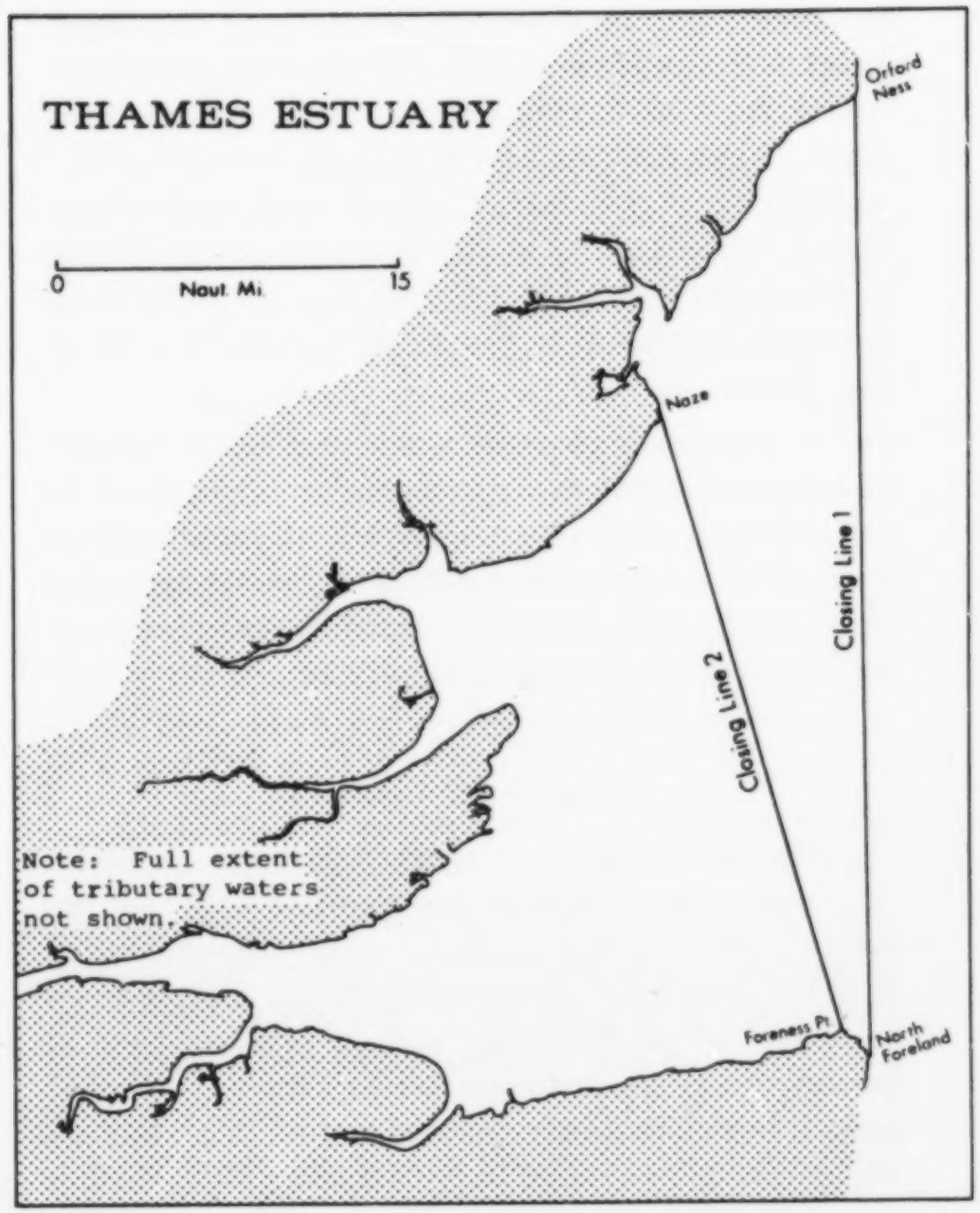


Figure R-14. Thames Estuary closing lines.

which shows very close comparability of the Bayou Lafourche mouth as being a well-marked natural entrance point as determined by the precedent of the Naze. If one reverses an overlay and superimposes it on the Naze, it is apparent that the angle of the shoreline of Ascension Bay at Bayou Lafourche in relation to the closing line is about the same as the angle of the shoreline in relation to Closing Line 2 at the Naze in the Thames Estuary.

A point of likeness between the Thames Estuary and Ascension Bay area is the way in which their inner tributary waters tend to the left of the map. However, except to preclude conceivable federal argument about a distinction which made no difference, as discussed *supra*, this is not highly significant.

Of "C's", "V's", and "O's" — Some Hypothetical Graphics

We are told by the United States that Ascension Bay is not a bay because it is shaped like a "C", *i.e.*, essentially semicircular. As we have demonstrated *supra*, it is not essentially semicircular. It has a pronounced "side pocket" at West Bay and its relative depth of penetration is markedly greater by graphic inspection since it has more deeply recessed waters than the most recognized of recognized bays, Monterey Bay, which is essentially semicircular or "C" shaped as hereafter shown. But then, it is implied by United States' argument that if a bay has deeper penetration than a "C" to the point that it attains a "V" shape instead of a "C" shape, it is not a bay either. It seems that the only

shape that would satisfy government argument is an "O". Such a waterbody is completely landlocked in the geographic sense.

In fact, a shape that is essentially like a "C", which does no more than satisfy the semicircle test (*but also meets the additional "well-marked" requirement of identifiable headlands*, as required by 394 U.S. 11, at 54) satisfies the "landlocked" legal standard of the Convention. That legal standard should not be confused with the geographic concept "landlocked" in the sense of totally or nearly totally enclosed. As demonstrated below, the "landlocked" requirement of the semicircle test means half or more than half enclosed, and not "completely" enclosed. That standard traces back to the proposal of the United States at the Hague Conference, where the semicircular method was first proposed. This method

> took into account the extent to which an embayment penetrated the land area. 1 *Shalowitz*, at 34.

The discussion by Shalowitz at 34 *et seq.* convincingly demonstrates that a possible geographic meaning of completely "landlocked" in the sense of an "O"-shaped identation with a small mouth or hole in the "O" was never intended.

Shalowitz has so well presented this matter that we simply reproduce the remarks and illustrative figures from 1 *Shalowitz* 34 *et seq.*

Note especially the concluding sentence that an exact semicircular shape would constitute inland waters.

The guiding principle of the method can best be illustrated by reference to figure 3.[32] Suppose several hypothetical coastal indentations be considered, ranging from a completely landlocked bay at *A*, which would be the ideal bay, to a slight curvature in the coast, as at *B*, all based on a circle of fixed diameter. The circle is adopted as the theoretical bay because it is the simplest of geometric figures that simulates a bay in nature. The bay terminating at *A* would be the extreme of a closed bay, being almost completely within the surrounding land area, and would be without question inland waters. The indentation at *B*, on the other hand, is so slight in relation to the full circle, as to be almost wholly without the land area. It would be the extreme of an open bay, and would without doubt be outside of the inland waters. In passing from *A*, the closed bay, to *B*, the open bay, there will be indentations that are more within the land area than without, such as at *D*, and there will be indentations that are more without the land area than within, such as at *E*. There will be one indentation, *C*, at the half-way point, which will be just as much within the land as without. This is the bay formed by the semicircle whose diameter is the distance between its headlands. (It is shown as an inset in the lower right-hand corner of the figure.) It will be the theoretical bay which is on the borderline between an open and a closed bay. This gives a yardstick for determining the status of a coastal indentation. Since bays in nature are seldom exactly circular, recourse is had to the theory of equivalence and the rule adopted

[32] Graphic illustrations related to this discussion appear on Figure R-15.

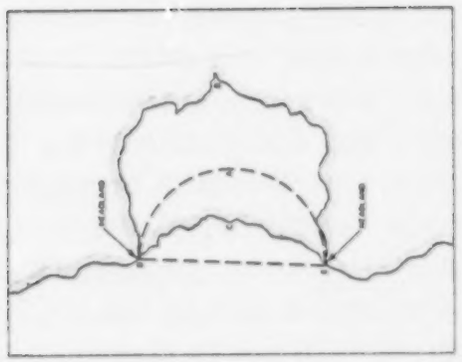


FIGURE 4.—The semicircular rule applied (United States proposal).

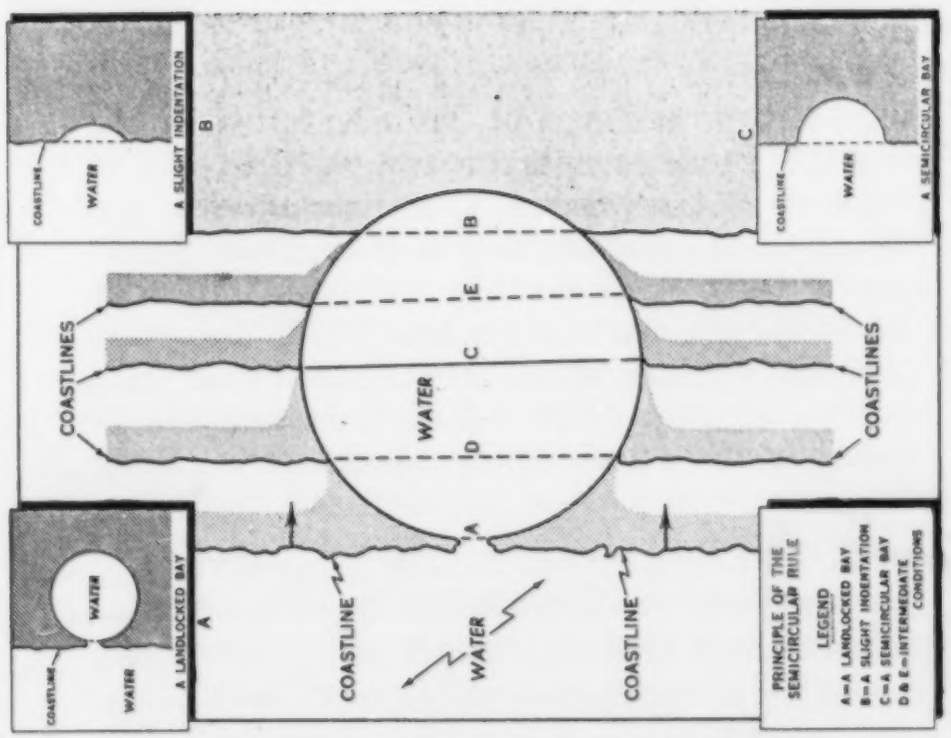


FIGURE 3.—Principle of the semicircular rule for determining the status of an indentation (inland waters or open sea).

Figure R-15. Figures 3 and 4, 1 *Shalowitz* 35, at 37.

that if the area of the bay in nature is greater than the area of the semicircle formed with the distance between the headlands as a diameter, the bay is a closed bay and the seaward boundary of inland water is the headland-to-headland line. If the area of the bay is less than the area of the semicircle, the bay is an open bay and the boundary line of inland water is the low-water mark following the sinuosities of the coast. (Area is a better unit of comparison than perimeter because the irregular form of the low-water line tends to lengthen unduly the latter.)

The application of the semicircular principle to a coastline is illustrated in figure 4. Curve *A* is a semicircle whose diameter is the line *DE* joining the two headlands of the indentation. If the shoreline of the indentation, whose status is to be determined, is curve *B*, it is readily apparent that area *DBE* is greater than area *DAE*. The indentation is therefore a closed bay and would be part of the inland waters of a country. But if the shoreline of the indentation is curve *C*, then area *DCE* is less than area *DAE* and the indentation is an open bay and outside of the inland waters. If the area is exactly equal to the semicircle, the indentation should be regarded as inland waters.

This is what "landlocked" legally means—an indentation with an area that is half or more enclosed, not one which is "completely landlocked" in the complete, geographic sense. At page 218 *et seq.*, Shalowitz makes perfectly plain that his analysis of Secs. 42 and 421 (quoted above) related to the definition of a bay under Article 7(2) of the Convention, and that the semicircle test further defines "landlocked":

(a) *Definition of Bay.*—Paragraph 2 of Article 7 defines a bay as "a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast." This sets forth the important concept of landlocked waters, or waters situated within the body of the land, for an indentation to qualify as a bay. But of itself it provides no criteria for determining how landlocked an indentation must be in order to remove it from the category of a mere curvature. In effect, it would be little better than the "Configuration and characteristics" rule promulgated by the tribunal in the North Atlantic Coast Fisheries Arbitration (*see* Part 1, 411).

To make the definition more specific, a second criterion was added in paragraph 2, namely: "An indentation shall not, however, be regarded as a bay unless its area is as large as or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation." This is the semicircular rule, the genesis and development of which has been previously discussed (*see* Part 1, 42, 421).

In the application of the semicircular rule to an indentation containing pockets, coves, or tributary waterways, the area of the whole indentation (including pockets, coves, etc.) is compared with the area of a semicircle. If the indentation meets the test, a closing line is drawn across the headlands. But if it fails to satisfy the test and the indentation becomes open sea, the semicircular rule should still be applied to any of the tributary waterways for the purpose of determining

their status as inland waters. 1 *Shalowitz*, at 218-20.

Monterey Bay — An Essentially Semicircular Indentation

Monterey Bay presents ultimate proof of the principle that an essentially semicircular configuration that satisfies the semicircle area test meets the "landlocked" criterion of Article 7(2). While that bay's 19.24 mile wide mouth is less than the 43 mile mouth of Ascension Bay, Moray Firth's 73 mile wide mouth makes such difference insignificant, as will be confirmed by an examination of New Zealand's practice (acquiesced in by the United States) concerning Hawke Bay.

First, we point to the configuration of Monterey Bay compared to a semicircle. See Figure R-16, a reproduction of a portion of a Monterey Bay published chart with a semicircle drawn across the Court recognized mouth which conveys the simple fact that Monterey Bay is essentially semicircular in appearance. Note that the land even intrudes into the inner part of the semicircle. This also demonstrates the validity of Shalowitz's analysis that "equivalence" underlies the landlocked test. It is the *average* area of penetration into the land. At Monterey Bay, the Monterey Harbor area, for example, at the side of the indentation helped make up the total bay area to overcome the shortage caused by the slight depth of penetration at the center of the bay; but if the central penetration had been deeper and the lateral lesser, the central could have

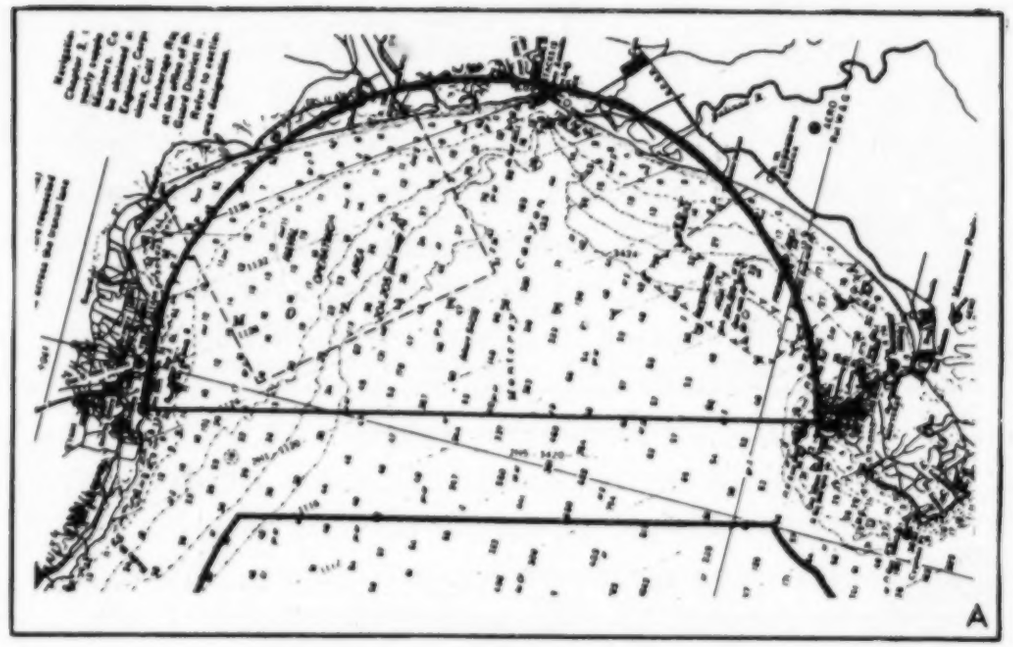


Figure R-16. Monterey Bay mouth with semicircle and three-mile projection. Note the essentially semicircular shape of Monterey Bay and that part of its shoreline lies within the semicircle.

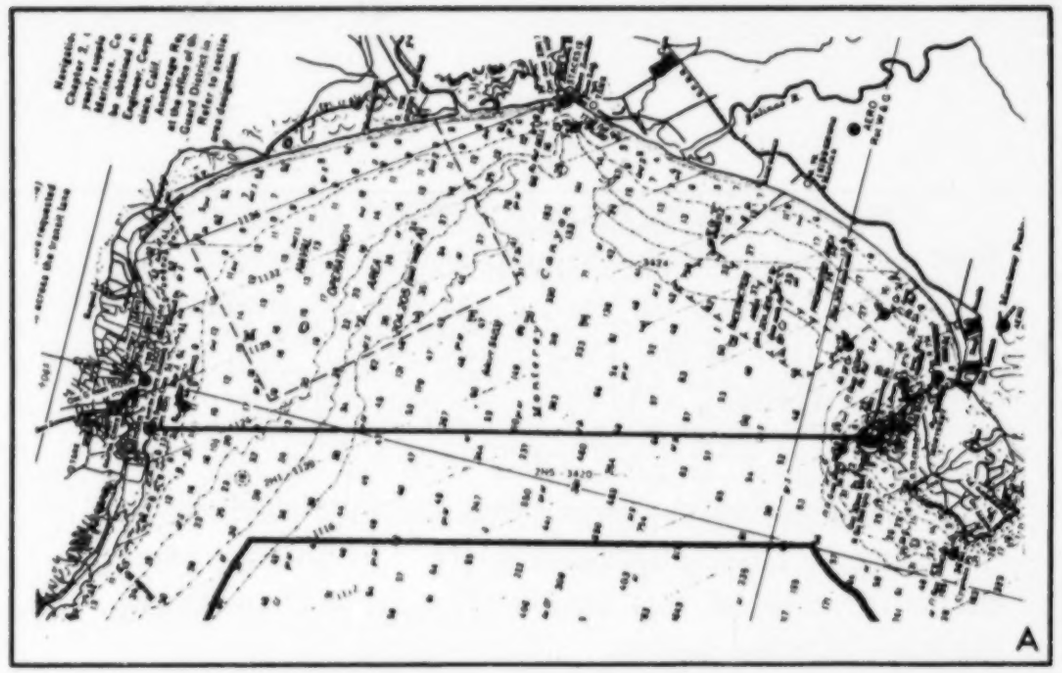
furnished equivalent penetration to compensate for the lack of lateral penetration (to the sides). It is immaterial if the total area is made up of a subsidiary geographic feature such as Monterey Harbor (the distinct cove to the right in Figure R-16). Note that here the California Monterey Bay result is opposed by Dr. Hodgson who argues that subsidiary features are to be excluded from consideration.

An understanding of the shape factors of Monterey Bay and other recognized bays makes some United States arguments wither away as morphologically illogical. The government would eliminate from consideration penetrations deep enough and sharp enough to

be identified as separate geographic features within an outer bay. The remaining "generalized" shoreline would then be said to lack sufficient deepness and sharpness to be deemed a bay. Only those bays which *ab initio* lacked deep, sharp, subfeatures would have their total configuration considered. Naturally, such bays would be assured of lacking deepness and sharpness of penetration and could be rejected. Thus, the United States, its employees' subjectivity unfettered by law, could do as it pleases with State and foreign maritime boundaries. Louisiana submits that neither the Courts of this nation nor any international tribunal would be deluded by such geographic "heads I win, tails you lose" reasoning.

Hawke Bay — Monterey Bay Comparison

Examination of any large, published map of the New Zealand coast will reveal a bay known as Hawke Bay. Inspection or scaling of published charts shows a mouth in excess of 41 nautical miles for Hawke Bay. See *e.g.*, New Zealand Chart 220, published at the Hydrographic Branch, Navy Office, New Zealand (1966). That published chart shows the internal waters, territorial sea, and 12 mile fishing zone of New Zealand as prescribed by New Zealand's Territorial Sea and Fishing Zone Act of 1965. Portions of that chart showing Hawke Bay and legend material explanatory of the shading appear in Figure R-17 which compares the shape of Monterey Bay and Hawke Bay. Hawke Bay is very similar to the essentially semicircular shape of Monterey Bay.



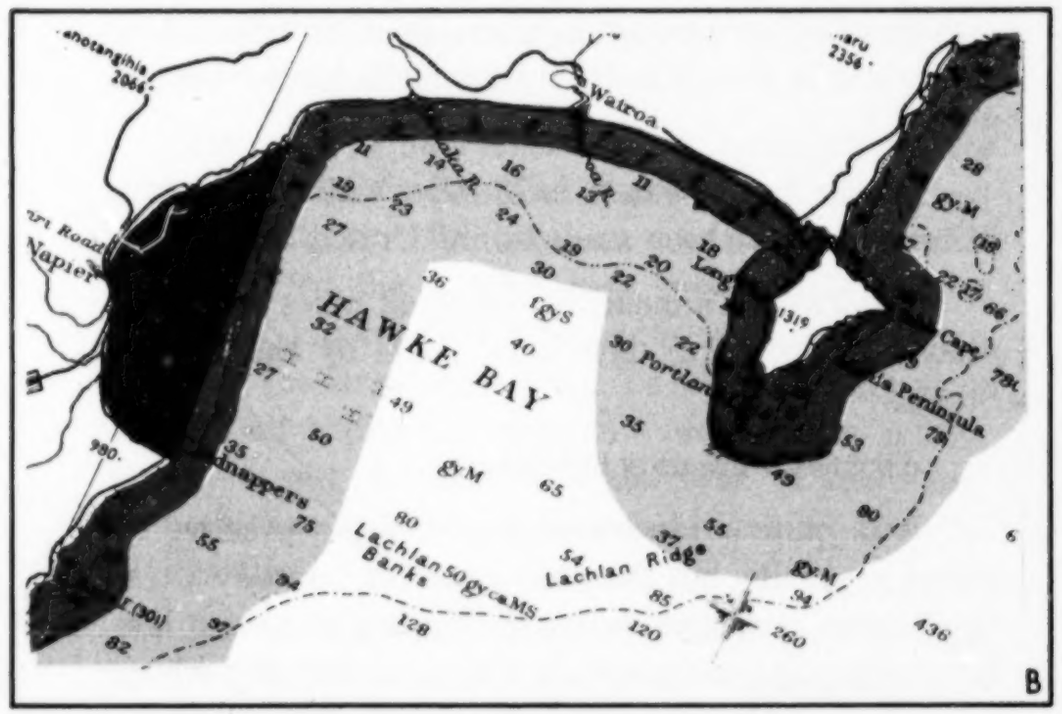


Figure R-17. Comparison of the configuration of (A) Monteray Bay, California with (B) Hawke Bay, New Zealand. Sources of maps: (A) U. S. Exh. 416-D (tr. 6427), Chart #5402 (B) N.Z. 220, published at the Hydrographic Branch, Navy Office (New Zealand), January 1966 with descriptive legend material reproduced above.

From Cape Kidnappers to Portland Island is more than 41 nautical miles, and so a 24-mile line was drawn in front of the city of Napier, an obvious application of Article 6(c) of the 1965 New Zealand Act, which called for drawing a 24-mile line enclosing the maximum extent of area if the bay mouth exceeded 24 miles.

The New Zealand legislation and published charts depicting its official application are to be found in most major libraries of this nation. The State Department is aware of these claims.

Hawke Bay's mouth is in excess of 41 miles wide. No protest is known to have been made by the United States.

Moray Firth's mouth is 73 miles wide. No protest is known to have been made by the United States.

The Thames's mouth is about 43 miles wide. No protest is known to have been made by the United States.

All cases were duly publicized.

It is quite evident that not only the practice of States generally, but the practice of the United States, has been to recognize claims to bays which have a less favorable configuration than Ascension Bay and which are as large or larger at the mouth. It is only in domestic litigation, where it is in the government's monetary interest to claim otherwise, that contrary "subjective" opinions are ventured by a State Department expert. The Special Master was not impressed by this effort on behalf of the United States.

Closing Line of Ascension Bay as an Overlarge Bay

The Special Master determined that the outermost closing line of Ascension Bay as an overlarge bay was a straight line between the tip of the eastern Belle Pass jetty on the west and the tip of the east jetty at Southwest Pass on the east, and recognized that there were other more inland closing lines exceeding 24 miles. (Report, at 45).

Other closing lines could be selected which would satisfy the Convention as an overlarge bay as shown by Figure R-18.

Figure R-18 does not reflect all tributary waters evidenced from large-scale charts examined. Indeed lines tested by Mr. Whitaker, as a witness for Louisiana, satisfied the test by such substantial margins that Mr. Whitaker did not bother to measure all tributaries on the large-scale chart. Tr. 3968. If such were done or all additional area now eroded were added, semicircle test satisfaction would even be more pronounced than the data of Louisiana Exhibit 104 (tr. 2818) indicate.

The United States does not contest the fall back 24-mile line between coordinates X = 2,406,890, Y = 189,733 and X = 2,550,402, Y = 216,158.

We respectfully suggest that the above discussions demonstrate that there is no merit in United States' effort to overrule the findings of fact by the Special Master that Ascension Bay is an overlarge bay. This ruling of the Special Master should be sustained.

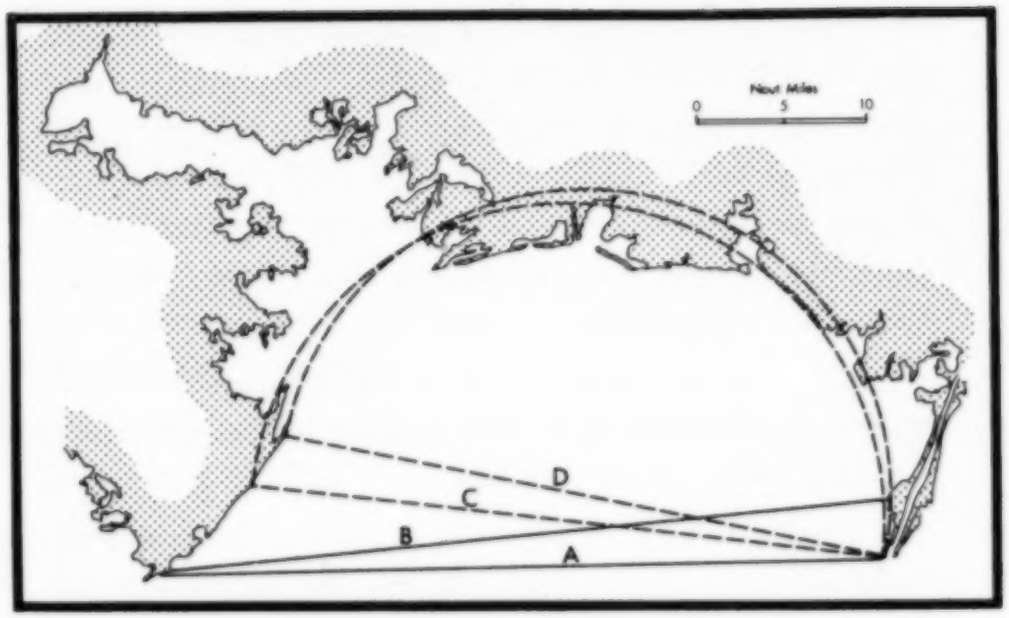


Figure R-18. Ascension-Barataria Bay (from La. Exh. 104, tr. 2818) showing locations of two possible overlarge bay closures (C and D) landward of those shown on La. Exh. 104 (A and B). Lines C and D enclose waters even more landlocked than those behind lines A and B and would even more obviously satisfy semicircle test requirements.

CONCLUSION

Louisiana respectfully urges that the three exceptions filed by the United States should be overruled.

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PROOF OF SERVICE

I, the Attorney General for the State of Louisiana, certify that copies of this reply brief have been properly served on the_____day of January, 1975, upon the Solicitor General and the Attorney General of the United States, Department of Justice, Washington, D. C. 20530.